

**CFTC Letter No. 97-90****October 29, 1997****Division of Trading & Markets**

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

Request to Treat Certain Investors as Qualified Eligible Participants

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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 you had with Division staff. By your correspondence, you request relief from the requirements of Rules 4.21, 4.22(a) and (b), 4.24, 4.25, and 4.26 ( Rules<sup>1</sup>) on behalf of T, a registered commodity pool operator ( CPO ) and commodity trading advisor ( CTA ), with regard to ( Insider Fund ), a commodity pool operated by T. You also request relief from the qualified eligible participant ( QEP ) criteria of Rule 4.7(a) on behalf of T with regard to ( Outsider Fund ), another commodity pool operated by T.

**THE INSIDER FUND**

Based upon your representations, we understand the relevant facts concerning the Insider Fund to be as follows. The Insider Fund began trading as of January 1, 1996. On November 4, 1996, March 24, 1997, and June 2, 1997, the Division granted T's requests for exemption from compliance with the Rules in connection with its operation of the Insider Fund.<sup>2</sup> T now seeks further relief from the Rules to permit it to accept two additional persons as investors in the Insider Fund. You represent that each of these additional persons (the Proposed Participants ) is an employee of T's affiliate, ( T Advisors )<sup>3</sup> and that each is involved in the trading or management of the Insider Fund. You further represent that each of the Proposed Participants is a sophisticated investor fully capable of evaluating the risks of an investment in the Insider Fund without the full disclosure and reporting safeguards of the Commodity Exchange Act [ Act<sup>4</sup>] and the Commission's regulations. The Proposed Participants are:

- (1) A, who joined T and T Advisors as risk manager in May 1997. A has worked in the securities and futures business since June 1987 when he

received an MBA in finance from the University of X. A has been an associated person and general manager of U, a futures commission merchant; director of risk management for R, an exchange; and head of risk control and business strategies for the capital markets group of Z.

(2) B, who joined T Advisors as investment manager in June 1996. B has worked in the securities business since mid-1992. He was a clerk on the floor of N, a securities exchange, for W, a securities broker/dealer, and, subsequently, an institutional salesman for W at its main trading desk. B has a B.S. degree in economics and holds Series 7 and 63 licenses.

In support of your request, you represent that T will: (1) provide each Proposed Participant with a copy of the Insider Fund's Limited Partnership Agreement and Private Placement Memorandum; (2) obtain written confirmation that each Proposed Participant has received, read, and understood the Private Placement Memorandum; (3) provide each Proposed Participant with quarterly financial statements and audited annual financial statements; (4) notify each Proposed Participant that the Insider Fund is being operated pursuant to exemptive relief granted by the Division; (5) explain the nature and purpose of such exemption; (6) obtain a written acknowledgment from each Proposed Participant that he does not object to the Insider Fund's operation pursuant to exemptive relief; and (7) cause any Proposed Participant who ceases to be an employee of T or T Advisors to redeem or transfer<sup>5</sup> his interest in the Insider Fund. The Proposed Participants also will have access to the Insider Fund's books and records.

You also request that a third investor, D, a limited partner in the Insider Fund<sup>6</sup>, and an accredited investor, be permitted to maintain his investment in the Insider Fund through October 31, 1997, notwithstanding the termination of his employment with T Advisors as of July 31, 1997. In support of this request, you represent that D, while no longer an employee of T Advisors, served as a consultant to T Advisors from July 31, 1997 through October 5, 1997<sup>7</sup>. Even though D is no longer affiliated with T or T Advisors, you request that D be permitted to remain in the Insider Fund through the end of October, when the books and records of the Insider Fund will be updated.

### THE OUTSIDER FUND

Based upon your representations, we understand the relevant facts concerning the Outsider Fund to be as follows. The Outsider Fund began trading as of January 1, 1996 and is currently being operated as a Rule 4.7 exempt pool. On September 30, 1996 and March 26, 1997, the Division granted T's request to accept the investments of certain Non-QEPs in the Outsider Fund<sup>8</sup>. T now seeks further relief from Rule 4.7 to accept two additional persons (the Proposed Non-QEP Participants) as investors in the Outsider Fund. You represent that each of these investors is fully

capable of evaluating the risks of an investment in the Outsider Fund without the full disclosure and reporting safeguards of the Commodity Exchange Act and the Commission's regulations. The Proposed Non-QEP Participants are:

(1) E, a dentist, who has been a friend and neighbor of C, the controlling principal of T and T Advisors, for five years. E is an accredited investor with an estimated net worth of approximately \$5 million. He also has a securities portfolio worth \$1 million under professional management.

(2) F, who is controller of T and T Advisors. F is a limited partner in the Insider Fund. He is seeking to transfer \$200,000 from the Insider Fund to the Outsider Fund.

You also request that D be permitted to invest in the Outsider Fund as of November 1, 1997. In support of this request, you represent that D is an accredited investor who is fully capable of evaluating the risks of an investment in a [ T fund] without the full disclosure and reporting safeguards of the Commodity Exchange Act and the Commission's regulations.

In support of your request, you represent that T will obtain the written consent of D and the two Proposed Non-QEP Participants to be treated as a QEP and, further, that T will provide each such Participant with access to all of the books and records of the Outsider Fund.

Based upon the foregoing, 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 T from compliance with Rules 4.21, 4.22(a) and (b), 4.25, and 4.26 in connection with its operation of the Insider Fund. The Division also will not recommend that the Commission take any enforcement action against T for failure to comply with Rule 4.7(a) if it continues to claim relief pursuant to Rule 4.7, notwithstanding investment by D and the Proposed Non-QEP Participants in the Outsider Fund and treats D and the Proposed Non-QEP Participants as QEPs.

You should be aware that the relief granted herein does not excuse T from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the Act) or in the Commission's regulations thereunder. For example, T remains subject to Section 4o of the Act,<sup>9</sup> 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 T solely in connection with its operation of the Insider Fund and the Outsider Fund, as discussed above.

This letter is based on the representations that have been 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 Insider Fund or Outsider Fund, including the composition of their investors, change in any way from those as represented to us. Further, the no-action position taken herein with respect to the Outsider Fund 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 Helene D. Schroeder, an attorney on my staff, at (202) 418-5424.

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 (1997).

<sup>2</sup> CFTC Interpretative Letters No. 96-82, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,911 (November 4, 1996); No. 97-18, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,010 (March 24, 1997).

<sup>3</sup> T Advisors is registered as a CTA and CPO and serves as co-investment manager of the Insider Fund. Its sole managing member is C, who also is T's sole managing member and is individually registered as a CPO.

<sup>4</sup> 7 U.S.C. § 1 et seq. (1994)

<sup>5</sup> You further represent that, upon the termination of the employment of any Proposed Participant, interests in the Fund may be transferred only to another QEP or to some other appropriate person on whose behalf relief has been granted by the Division.

<sup>6</sup> D, who joined T Advisors in February 1997 as executive vice-president, and who has been employed in the securities industry since 1986, became a limited partner of the Insider Fund pursuant to relief granted by the Division on June 2, 1997.

<sup>7</sup> You represent that D helped to manage the trading desk both as an employee of T Advisors and as a consultant thereto.

<sup>8</sup> CFTC Interpretative Letters No. 96-69, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶

26,795 (September 30, 1996); No. 97-28, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶  
27,038 (March 26, 1997).

<sup>9</sup> 7 U.S.C. § 6q (1994).