

**CFTC Letter No. 97-02****January 10, 1997****Division of Trading & Markets**Re: Request to Treat Investor as Qualified Eligible Participant under Rule 4.7

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Dear :

This is in response to your letter dated December 19, 1996, 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, with regard to the "Fund", a commodity pool for which "X" serves as the CPO and general partner.

Based upon your representations, we understand the relevant facts to be as follows. The Fund has been operated pursuant to the criteria of Rule 4.7(a)<sup>2</sup> and is a "fund-of-funds" in that it invests its assets in other investment funds. "X" now wishes to permit "A", who is not a QEP, to participate in the Fund. You represent that "A" is a highly sophisticated investor who is an active participant in the management of the Fund and is a portfolio manager for all of "X" limited partnerships. He joined the Fund's former general partner, "Y", in 1994 to work in the multi-manager partnership area evaluating manager and portfolio risk. "A" became an employee of "X" when it was formed in 1995, but his management duties with regard to the Fund remained the same. He is registered with the Commission as an associated person and is an accredited investor as defined in Regulation D under the Securities Act of 1933,<sup>3</sup> as amended. "A" obtained an M.B.A. from "Z" in 1989 and has ten years of investment experience. You represent that he is "fully capable of evaluating and assuming the risks of an investment in the Fund without the protections of the disclosure, reporting and recordkeeping requirements" of the Commodity Exchange Act ("Act").<sup>4</sup> He was not solicited to participate in the Fund but, rather, has asked to do so and wishes to be treated as a QEP.

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 continues to claim relief pursuant to Rule 4.7,

notwithstanding investment by "A" in the Fund, and treats "A" as a QEP. This relief is, however, subject to the conditions that "A": (1) consents in writing to being treated as a QEP; and (2) has access to the Fund's books and records.

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 4o of the Act,<sup>5</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

cc: Daniel A. Driscoll

National Futures Association

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

<sup>2</sup> Pursuant to a Notice of Claim for Exemption under Rule 4.7, dated September 29, 1995, interests in the Fund may be sold only to QEPs. As of November 30, 1996, the Fund had approximately \$211 million in net assets.

<sup>3</sup> 17 C.F.R. § 230.501 (1996).

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

<sup>5</sup> 7 U.S.C. § 6o (1994).