



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

94-19

DIVISION OF
TRADING AND MARKETS

November 24, 1993

Re: Request for Relief from Rule 4.7

Dear :

This is in response to your letter dated October 26, 1993, as supplemented by telephone conversations with Division staff, in which, on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), you request relief from certain requirements of Rule 4.7^{1/} in connection with the operation of the "Pool".

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. "X" is the managing general partner of the Pool, a general partnership. The Pool's participants are currently employed by "X" in various executive or trading positions. You represent that each such participant: (1) is knowledgeable about the commodity interest and securities markets and understands the nature of an investment in the Pool; (2) is familiar with "X"'s operations; (3) has daily access to all information concerning the Pool and its investments; and (4) is in regular contact and consults with "X" concerning the Pool.^{2/}

The Pool is a qualified eligible participant ("QEP"), as defined in Rule 4.7(a)(1)(ii), but not all participants in the Pool are QEPs. The Pool, a fund of funds, currently has approximately \$118 million in assets, nine percent of which is invested in Rule 4.7 exempt pools. By letter dated March 23, 1992, the Division exempted "X" from compliance with Rules 4.21, 4.22 and

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

^{2/} You note that the only exceptions to the foregoing are: (1) existing family members of a partner, and (2) trusts formed for the benefit of a family member of a partner who may become a partner at some point in the future.

4.23(a)(10) and (a)(11) in connection with its operation of the Pool^{3/}.

Rule 4.7(a)(ii)(B)(xi) provides, among other things, that a pool may not invest more than ten percent of its assets in Rule 4.7 exempt pools unless all participants in the pool are QEPs. You claim that many of the best investment opportunities available today are in Rule 4.7 exempt pools, and that without relief from this restriction the Pool will not be accepted as a limited partner in other Rule 4.7 exempt pools because some of the Pool's participants are not QEPs. Accordingly, you request relief from the ten percent limitation on investments in Rule 4.7 exempt pools by the Pool ("Investee Pools").

Based on the foregoing, the Division believes that your request has merit. Rule 4.7(a)(ii)(B)(xi) imposes a ten percent limitation on investment in Rule 4.7 exempt pools by commodity pools in which some participants are not QEPs because "participants in such entities may not be QEPs and thus could not invest in an exempt pool based on their own financial qualifications and investment sophistication".^{4/} In granting the prior Part 4 relief to "X", the Division acknowledged that, because of their investment acumen, close relationship to "X" and ready access to information about the Pool's operations, the Pool's participants did not need the full protection of Part 4 of the Commission's regulations. Accordingly, the Division will not recommend that the Commission take any enforcement action against "X" or the CPO of any Investee Pool if the Pool invests more than ten percent of its assets in Investee Pools. This position is, however, subject to the condition that prior to making an investment for the Pool that would bring the Pool's assets invested in Investee Pools to over ten percent, "X" notifies the Pool's participants who are not QEPs of its intention to do so and gives them an opportunity to redeem their interests in the Pool within ten days from receipt of the notice.

This letter is based on the representations provided to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection,

^{3/} When the Division's letter was issued, there were 14 participants in the Pool, whose qualifications were further described in that letter. Subsequent to the Division's letter, by letters dated September 30, 1992 and January 19, 1993, you advised the Division that on two separate occasions a new participant had been admitted in the Pool and the Division confirmed in each case the applicability of the relief previously granted.

^{4/} 57 Fed. Reg. 34853 at 34856 (August 7, 1992).

we request that you notify us immediately in the event the operations or activities of "X" in connection with the Pool change in any way from those as represented to us. Further, this letter is applicable to "X" solely in connection with its operation of the Pool and to the CPOs of Investee Pools solely in connection with the Pool's investment in them.

We note that this letter relieves "X" and the CPOs of the Investee Pools solely from certain requirements of Rule 4.7 and does not excuse them from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (1988 & Supp. 1992) ("Act"), or in the Commission's regulations issued thereunder. For example, each remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. 1992), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, 17 C.F.R. Parts 15, 18 and 19 (1993), and to all other provisions of Part 4.

Further, this letter represents the views of this Division only and 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 France M.T. Maca, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran
Director