



U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

96-05

December 22, 1995

Re: Request for Relief to Treat a Foreign Entity as a
Qualified Eligible Client under Rule 4.7(b)

Dear :

This is in response to your letter dated November 13, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you request on behalf of "X" that the Division confirm that "X" may claim no-action relief under Rule 4.7(b)^{1/} in connection with its providing commodity interest trading advice to ("the Fund") a foreign entity that is not a qualified eligible client ("QEC"), as defined in Rule 4.7(b)(1)(ii).

Based upon the representations made in your letter, we understand the facts to be as follows. "X", a commodity trading advisor ("CTA") registered with the Commission, has never entered into any agreement to guide or direct trading of any client that is not a QEC under Rule 4.7(b) and has filed a claim of exemption under Rule 4.7(b)(2) with the Commission.^{2/} "X" will act as trading manager for the Fund and in that capacity will have the authority to select trading advisors, each of which will be allocated a portion of the Fund's assets for trading.^{3/} The Fund is proposed to be organized under the laws of the Grand-Duchy of Luxembourg as a mutual investment fund. The sponsor of the Fund, "Y", is a Japanese securities firm. The manager of the Fund, "Z", is an affiliate of "Y" organized under the laws of the

^{1/} Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995) as amended by 60 Fed. Reg. 38146 (July 25, 1995).

^{2/} Commission records indicate that the filing was made on February 12, 1993.

^{3/} You indicate that the assets of the Fund will be in excess of three hundred million dollars.

Grand-Duchy of Luxembourg.^{4/} The administrator and custodian of the Fund will be organized as a bank, also under the laws of the Grand-Duchy of Luxembourg. Interests in the Fund will be sold by "Y", and certain of its non-United States affiliates, outside of the United States and only to non-United States persons as defined in Rule 4.7(a)(1)(C).

Based upon the foregoing representations, and consistent with our prior practice in this area,^{5/} the Division believes that your request has merit. Accordingly, subject to the conditions set forth below, the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with the QEC criteria of Rule 4.7(b)(1)(ii) with respect to its providing commodity interest trading advice to the Fund. This position is subject to the following conditions: (1) the Fund is comparable in nature and purpose to one of the United States entities eligible for QEC treatment pursuant to Rule 4.7(b); (2) the Fund has a portfolio with a minimum value of twenty-five million dollars; and (3) the Fund consents in writing to being treated as a QEC.

This letter is based upon the representations made in your letter and is subject to compliance with the condition stated above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations or activities of "X", the Fund or "Z" change in anyway from those as represented to us.

We note that this letter relieves "X" solely from the QEC criteria of Rule 4.7(b) with respect to providing commodity interest trading advice to a non-QEC and does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")^{6/} or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 40 of the Act,^{7/} to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4.

^{4/} You state that, exclusive of the Fund, "Z" has in excess of three hundred million dollars under management.

^{5/} See CFTC Interpretative Letter No. 94-68 [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,157 (June 30, 1994).

^{6/} 7 U.S.C. §1 et seq. (1994).

^{7/} 7 U.S.C. 60 (1994).

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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 Myra Silberstein, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel