



U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

96-19

February 22, 1996

Re: Request to Treat Certain Persons as Qualified Eligible Participants under Rule 4.7

Dear :

This is in response to your letter dated February 5, 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 on behalf of "X" and "Y", each a registered commodity pool operator ("CPO"). "X" and "Y", the general partners and CPOs of the "Fund", seek confirmation that they may claim relief under Rule 4.7(a)^{1/} with respect to the Fund despite the fact that certain persons interested in investing in the Fund will not be qualified eligible participants ("QEPs") as that term is defined in the rule.

Based upon the representations contained in your letter, as supplemented, we understand the relevant facts to be as follows. On October 23, 1995, "X" and "Y" filed a Notice of Claim for Exemption pursuant to Rule 4.7 on behalf of the Fund. Pursuant to this exemption, interests in the Fund may be sold only to QEPs. However, "X" and "Y" would like to admit the following non-QEP investors to the Fund ("Non-QEP Investors"):

- (1) "A", a registered associated person ("AP") of "X" and "X's" Director of Systems Trading,^{2/} who plans to invest less than ten percent of her net worth in the Fund. She and her husband currently have a net worth of \$350,000 and an annual income of nearly \$300,000. "A" is not an accredited investor as defined in Regula-

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38,146 (July 25, 1995).

^{2/} In this capacity, "A" is directly responsible for supervising "X's" trading desk and four traders.

tion^D under the Securities Act of 1933, as amended.^{3/} She has known "C",^{4/} the sole proprietor of "X" and one of the principals of "Y", for more than eight years and has extensive experience in the futures industry. Before joining "X" in January 1995, "A" worked for "Z" for six years, most recently as a senior trader.

- (2) "B", a registered AP and listed principal of "Y", who has been in charge of business development for "X" for the past six months. He plans to invest less than twenty percent of his net worth in the Fund. "B" is an accredited investor under Regulation D and has fifteen years of investment experience in the futures industry. He has known "C" for the past ten years and operated a commodity pool from 1982 to 1986.
- (3) "D", "C's" mother, who plans to invest less than ten percent of her net worth in the Fund. She is an accredited investor, and she and her husband have a net worth in excess of one million dollars.
- (4) "E", one of "C's" sisters, who plans to limit her investment in the Fund to seventeen and one-half percent of her net worth. She is not an accredited investor. "E", who has a masters degree in management, is a management consultant.
- (5) "F", another of "C's" sisters, who plans to limit her investment in the Fund to twenty percent of her net worth. She is not an accredited investor. "F" is a history professor.
- (6) The trusts of "C's" three infant children plan to invest \$20,000 each in the Fund. Each trust has two trustees: (1) "G", the children's mother, who is a QEP; and (2) "H", a family friend who is not a QEP or an accredited investor, but who has fifteen years of futures trading experience. "H" has a doctorate in economics.
- (7) You, legal counsel to "C" and his firms, who plan to invest less than ten percent of your net worth in the

^{3/} See 17 C.F.R. § 230.501 (1995).

^{4/} Commission records show that "C" is registered as an AP of "X" and "Y".

Fund. You are an accredited investor and have experience trading futures. You have known "C" since 1987.

- (8) The Membership Incentive Plan ("Plan") of the New York Cotton Exchange ("Exchange"), which is organized as a "rabbi trust" and which the Division has found to not be a commodity pool as that term is defined in Rule 4.10(d)(1),^{5/} plans to invest in the Fund. The Plan is not an accredited investor, but is administered by the Board of Managers of the Exchange, which you state "presumably includes accredited investors and QEPs who are intimately familiar with the futures market."
- (9) "I", a consultant to the futures industry since 1978, who plans to invest no more than ten percent of his net worth in the Fund. He has a net worth of more than \$400,000 and earns an annual income of more than \$200,000. "I" is an accredited investor. He has known "B" for ten years and has extensive knowledge of the futures industry. "I" has a doctorate in business and a masters degree in finance.

In support of your request, you thus conclude that these Non-QEP Investors possess either futures experience and familiarity with the Fund's management and operations, or have close family relationships with "C".

Based upon the representations you have made, 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" and "Y" for failure to comply with Rule 4.7(a) if they continue to claim relief pursuant to Rule 4.7, notwithstanding an investment in the Fund by the Non-QEP Investors, and they treat each such investor as a QEP. This relief is, however, subject to the condition that each Non-QEP Investor consents in writing to being treated as a QEP.

We note that this letter relieves "X" and "Y" 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 ("Act")^{6/} or the Commission's regulations issued thereunder. For example, they remain subject to

^{5/} See CFTC Interpretative Letter No. 96-2 (December 11, 1995) (to be published in Comm. Fut. L. Rep. (CCH)).

^{6/} See 7 U.S.C. § 1 et seq. (1994).

the antifraud provisions of Section 40 of the Act,^{7/} the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other applicable requirements of Part 4. Further, this letter is applicable to "X" and "Y" solely in connection with their operation of the Fund.

This letter is based upon your representations 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 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

^{7/} 7 U.S.C. § 60 (1994).