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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

August 6, 1996

Re: Exemption from Rule 4.7 to Treat Eligible Employees as
Qualified Eligible Participants

Dear :

This is in response to your letter dated June 3, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you request certain relief from Rule 4.7^{1/} on behalf of "X", a registered commodity pool operator ("CPO"),^{2/} in connection with its operation of the "Fund". Specifically, on behalf of "X" and for the benefit of "X" and the CPOs of certain other commodity pools in which the Fund may invest you request: (1) that "X" may claim relief under Rule 4.7 with respect to the Fund notwithstanding the investment therein by certain persons who are not "qualified eligible participants" ("QEPs") as defined in the rule; and (2) a waiver from the ten percent limitation on investments in Rule 4.7 (a)(1)(ii)(B)(xi) for pools that are QEPs but in which some participants are not QEPs to permit the Fund, which is a QEP but has some participants who are not QEPs, to invest more than ten percent of the fair market value of its assets in other commodity pools that are Rule 4.7 exempt pools ("Rule 4.7 Exempt Pools").

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. The Fund is a QEP and was not formed for the purpose of investing in Rule 4.7 exempt pools. The individual investors in the Fund will be "accredited investors" under Regulation D of the Securities Act of 1933 but they are not all QEPs. Rather, they are managing group members and key employees ("Eligible Employees") of "Y", all of whom you have represented to be experienced professionals in the consulting business or in administrative, financial, accounting, legal or operational activities related thereto. Specifically, the Eligible Employees are: (1) shareholders of "Y", i.e.,

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch.I (1996).

^{2/} "X", a Delaware corporation, has been a registered CPO since June 14, 1988.

management group members who are directors, principals and a limited number of high level administrators and client service support personnel of "Y", i.e., administrative shareholders who hold high-level positions in the administrative, financial, accounting, legal or operational departments of "Y" and whose positions are comparable to those held by the chief financial officer, general counsel and other senior executive positions in other large corporations; (2) certain retired directors of "Y"; and (3) the director of "Y's" Investment Programs and the director of "Y's" European Investment Programs.^{3/} Each Eligible Employee will receive, before investing, an offering memo which describes possible investments that could be made by the Fund and the accompanying risks of such investments. Each Eligible Employee will also consent to being 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(a). Accordingly, the Division will not recommend that the Commission take any enforcement action for failure to comply with Rule 4.7 against: (1) "X" if "X" claims relief pursuant to Rule 4.7(a), notwithstanding investment in the Fund by non-QEP Eligible Employees, and treats the Eligible Employees as QEPS; and (2) "X" or the CPO of any Rule 4.7 Exempt Pool if the Fund invests more than ten percent of the fair market value of its assets in Rule 4.7 Exempt Pools.

We note that this letter relieves "X" solely from compliance with certain requirements of Rule 4.7(a) in connection with the investment of the Eligible Employees in the Fund and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act")^{4/} or the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 40 of the Act,^{5/} 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.

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

^{3/} You represent that as of January 18, 1996, "Y" had approximately 6,800 employees of whom only 550 were shareholders. (170 directors, 338 principles and 42 administrative shareholders).

^{4/} 7 U.S.C. § 1 et seq. (1994).

^{5/} 7 U.S.C. § 60.

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the operations or activities of "X" or the Fund, including the composition of its investors, change in any way from those as represented to us. Further, this letter represents the position of the Division only. It does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions concerning this correspondence please contact me, or Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel