



# U.S. COMMODITY FUTURES TRADING COMMISSION

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COMMODITY FUTURES  
TRADING COMMISSION  
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DIVISION OF  
TRADING & MARKETS

November 20, 1996

Re: Rule 4.21 -- Request for relief permitting CPO of a pool with non-QEP participants to solicit QEPs without providing full Part 4 Disclosure Document unless a QEP requests a copy or elects to purchase pool interests

Dear :

This is in response to your letter dated October 25, 1996 to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by telephone conversations with Division staff. By your correspondence you request on behalf of "X" relief permitting "X" to use offering materials that would not contain all of the information required to be included in a Disclosure Document under Commission Rule 4.24<sup>1/</sup> when initially soliciting prospective participants in the "Pool" who are qualified eligible participants ("QEPs") as defined in Rule 4.7(a). "X" would subsequently deliver a complete Disclosure Document to any such QEP who elected to purchase an interest in the Pool or who requested a Disclosure Document.

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. "X" is a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), and acts as the CPO of the Pool. Units representing interests in the Pool are continuously offered to new and existing investors, each of whom must be an accredited investor as defined in Regulation D<sup>2/</sup> promulgated under the Securities Act of 1933.<sup>3/</sup> Sales of units are made by "X" and an affiliated regis-

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

<sup>2/</sup> 17 C.F.R. § 230.501 et seq. (1996).

<sup>3/</sup> 15 U.S.C. § 77a et seq. (1994).

tered securities broker.<sup>4/</sup> At the present time each prospective participant in the Pool receives a Disclosure Document prepared pursuant to Rule 4.24 on or before the date on which "X" or any selling agent of "X" solicits, accepts or receives funds, securities or other property from such prospective participant.

"X" seeks relief permitting it initially to provide prospective participants who are QEPs offering materials summarizing certain of the information in the Pool's Disclosure Document, including without limitation, a description of the trading strategy, the Pool's past performance, and the fees charged to the Pool.<sup>5/</sup> Such offering materials will not be distributed by any means that is likely to reach persons who are not QEPs. At such time as a QEP prospect elects to purchase an interest in the Pool, or requests a Disclosure Document, a copy of the Pool's Disclosure Document will be provided to such person. In any event, a Disclosure Document prepared pursuant to Rule 4.24 will be delivered before the date on which funds, securities or other property are received from such QEP.<sup>6/</sup>

In support of your request you represent that "X" will continue to comply with all applicable reporting and recordkeeping

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<sup>4/</sup> You represent that other registered securities brokers may also be used to sell units in the Pool, but that sales by employees of any such securities broker will satisfy the requirements of Rule 3.12(h) for exemption from the requirement to register as an associated person of a CPO.

<sup>5/</sup> You state that the offering materials will contain more extensive information than is contemplated by the provision of Rule 4.21(a) that permits a CPO to solicit accredited investors by means of a notice of intended offering and statement of the terms of the intended offering, subject to rules promulgated by a registered futures association. National Futures Association Compliance Rule 2-13(d), approved by the Commission October 10, 1996, sets forth the requirements for a notice of intended offering and statement of the terms of the intended offering for purposes of Rule 4.21.

<sup>6/</sup> "X" desires to implement the proposal to provide reduced initial disclosure to prospective QEP participants without being required to create separate classes of interests in the Pool. In the past the Division has granted relief, subject to certain conditions, permitting CPOs of pools with separate classes of interests to claim relief under Rule 4.7 with respect to certain but not all of such classes. See, e.g., Interpretative Letter No. 93-92, [1992-1994 Transfer Binder] Comm. L. Fut. Rep. (CCH) ¶ 25,858 (August 12, 1993).

requirements of Rules 4.22 and 4.23 with respect to all participants in the Pool.

Based on the foregoing, we believe that under the specific circumstances you describe, it would not be contrary to the public interest to grant the relief requested. Accordingly, pursuant to authority delegated by Rule 140.93(a)(1), the Division hereby exempts "X" from the requirement of Rule 4.21(a) to deliver or cause to be delivered a Disclosure Document before "X" may, directly or indirectly, solicit a prospective participant in the Pool, provided that: (1) such prospective participant is a QEP; (2) "X" maintains records establishing the qualifications of such QEP at its main business address and makes such records available to any representative of the Commission or the National Futures Association upon request; and (3) at the time of solicitation such prospective participant is provided with summary disclosure materials including a summary of certain information set forth in the full Disclosure Document which will represent more extensive information than would be included in the notice of intended offering and statement of terms of intended offering contemplated by Rule 4.21(a).<sup>7/</sup>

This letter is applicable to "X" solely in connection with the operation of the Pool. Furthermore, this letter does not excuse "X" or any securities broker or other person employed by "X" to offer or sell units of limited partnership interest in the Pool from compliance with any other applicable requirements contained in the Act<sup>8/</sup> or in the Commission's regulations issued thereunder. For example, each remains subject to the antifraud provisions of Section 40 of the Act,<sup>9/</sup> to the reporting requirement for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to Rule 4.41 in connection with the operation of the Pool and the offer and sale of units of interest in the Pool.

This letter is based upon the representations provided to us and is subject to compliance with the condition set forth 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 the Pool change in any way from those represented

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<sup>7/</sup> Any such disclosure would be subject to Section 40 of the Commodity Exchange Act (the "Act") and other Commission requirements.

<sup>8/</sup> 7 U.S.C. § 1 et seq. (1994).

<sup>9/</sup> 7 U.S.C. § 60 (1994).

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in your correspondence. If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, an attorney on my staff, at (202) 418-5445.

Very truly yours,

Susan C. Ervin  
Chief Counsel