



U.S. COMMODITY FUTURES TRADING COMMISSION

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**DIVISION OF
TRADING & MARKETS**

May 8, 1997

Re: Request to Treat Employee Partnership as a Qualified Eligible Participant under Rule 4.7(a) and for Relief from the Ten Percent Restriction of Rule 4.7(a) (1) (ii) (B) (2) (xi);
Request for Relief from CPO and CTA Registration Requirements of Section 4m(1) of the Act

Dear :

This is in response to your letter dated January 16, 1997 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 on behalf of (the "Managing Member"), a registered commodity pool operator, confirmation that the Managing Member may claim relief pursuant to Rule 4.7(a)^{1/} with respect to the operation of the "Pool", despite the fact that an investor in the Pool, ("T"), will not be a qualified eligible participant ("QEP"), as that term is defined in the rule. Since the Pool will be operated as a "fund of funds," we are also treating your request as one for relief from the restriction in Rule 4.7(a) (1) (ii) (B) (2) (xi), which would prevent the investment of more than ten percent of the Pool's assets in other pools for which the CPOs thereof have claimed relief pursuant to Rule 4.7(a) ("Rule 4.7(a) Exempt Pools"). In addition, you request relief from registration as a commodity pool operator ("CPO") and commodity trading advisor ("CTA") with respect to the general partner of "T", "U". The Pool and the Managing Member are affiliated with "V" or its subsidiaries (collectively, "W").^{2/} "U" is owned by "V".

Based upon the representations contained in your correspondence, we understand the pertinent facts to be as follows.

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

^{2/} Commission records indicate that these subsidiaries include "X", a registered securities broker/dealer and futures commission merchant, and "Z", a registered CPO and CTA.

The Pool, a limited liability company organized under the laws of the State of Delaware, is itself a QEP and was not formed for the purpose of investing in Rule 4.7(a) Exempt Pools. The Managing Member, also a limited liability company organized under Delaware law, will be responsible for the investment decisions and operations of the Pool.

The Pool will be funded from three sources: certain senior employees of "W", who qualify individually as QEPs; "W" proprietary capital; and, at the present time, two senior employee investment partnerships, "Y" and "T" (collectively, the "Partnerships").^{3/} "T" has total assets in excess of \$5,000,000. Participation in "T" will be limited to 100 "W" employees who are: (1) senior executive officers in charge of major business functions or units of "W", such as Trading, Finance, Legal, Investment Banking, etc.; and (2) accredited investors as defined in Regulation D under the Securities Act of 1933 (such investors may also be QEPs).

Currently, "T" consists of fifty-three senior management officials. All but fifteen such partners are also partners of "Y". Each official will receive, before investing, an offering memo which describes possible investments that could be made by "T" including investments in funds that provide access to other portfolio managers" and the risks of such investments.

Absent the requested relief, the Managing Member will not be able to treat "T" as a QEP because although "T" includes some non-QEP participants, it wishes to invest more than ten percent of its assets in the Pool. Further, absent the requested relief, the CPO of any Rule 4.7(a) Exempt Pool could not accept more than ten percent of the Pool's assets as an investment in its pool. In support of your request, you state that the general partner of "T", "U", will have ready access to information pertinent to "T's" investment in the Pool.

Based upon your representations, it appears that granting the requested relief would not be contrary to the public interest and

^{3/} By letter dated September 4, 1996, the Division granted no-action relief from Rule 4.7(a) to the Managing Member with respect to the treatment of "Y" as a QEP. The investor criteria of "T" are identical to those of "Y". We understand that "W" created a second employee partnership to make available a fund pursuing different investment objectives than those available under "Y".

the purposes of Rule 4.7(a). Accordingly, subject to the condition specified below, the Division will not recommend that the Commission take any enforcement action for failure to comply with Rule 4.7(a) against: (1) the Managing Member of the Pool solely on the basis that the Managing Member claims relief pursuant to Rule 4.7(a), notwithstanding an investment by "T" in the Pool, and treats "T" as a QEP; and (2) the Managing Member or the CPO of any Rule 4.7(a) Exempt Pool in which the Pool becomes a participant based solely upon the Pool's investment of more than ten percent of its assets in a Rule 4.7(a) Exempt Pool. This relief is, however, subject to the condition that "U", on behalf of "T", consents in writing to "T" being treated as a QEP.

By investing in a fund (the Pool) that in turn will invest in funds that trade commodity interests (the Rule 4.7(a) Exempt Pools), "T" itself would be a commodity pool. Absent relief, as the general partner of "T", "U" would be required to be registered as a CPO, and as the person who makes the investment decisions for "T", "U" also would be required to be registered as a CTA. In support of relief from CPO and CTA registration for "U", you have made the representations discussed above concerning the criteria for investment, the fact that each official will receive, before investing, an offering memorandum for "T" which discusses, among other things, possible investments and the risks attendant thereto, and the affiliation of the Pool and the Managing Member with "V". Further, you represent that: (1) neither "U" nor any principal thereof is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act");^{4/} (2) "U" will provide an investor in "T", upon request, with access to the Partnership's books and records; and (3) neither "U" nor any director or officer thereof serves as a CPO of any other commodity pool or as a CTA to any other person.^{5/}

^{4/} 7 U.S.C. §12a(2) or 12a(3) (1994).

^{5/} The general partners of "Y" and "T" are "S" and "U", respectively, each of which is owned by "V". One of the conditions underlying relief from CPO and CTA registration for "S" granted in our September 4, 1996 letter was the representation that neither "S" nor any of its officers or directors would serve as the CPO of any other commodity pool. Since (1) the investors in "T" are identical to those in "Y" (i.e., senior executive officers in charge of major business functions or units of "W"); (2) "T" was
(continued...)

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "U" under Section 4m(1) of the Act^{6/} based solely upon its failure to register as a CPO or CTA in connection with its operation of and provision of advice to "T".

We note that this letter relieves the Managing Member solely from compliance with certain requirements of Rule 4.7(a) and does not excuse it from compliance with any other applicable requirements contained in the Act or the Commission's regulations issued thereunder. Similarly, this letter relieves "U" solely from compliance with the registration requirements of Section 4m(1) of the Act with respect to acting as a CPO and CTA for "T". For example, each remains subject to the antifraud provisions of Section 4o of the Act,^{7/} 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. Further, this letter is applicable to the Managing Member solely in connection with its operation of the Pool and to "U" solely in connection with its activities as the CPO and CTA of "T".

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 Managing Member, the Pool, "U" or "T", including the ownership composition of any of the foregoing entities, 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 office or division of the Commission.

^{5/} (...continued)

established to accomplish investment objectives different from those available through "Y"; and (3) more than two-thirds of the participating officials are investors in both Partnerships, we do not believe that the establishment of "T" affects the relief provided by our September 4, 1996 letter.

^{6/} 7 U.S.C. §6m(1) (1994).

^{7/} 7 U.S.C. § 6o (1994).

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If you have any questions concerning this correspondence, please contact me or Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel