



COMMODITY FUTURES TRADING COMMISSION

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94-56

DIVISION OF
TRADING AND MARKETS

May 6, 1994

Re: Request for Relief from Certain Requirements of Rules
4.7(a) and (b)

Dear :

This is in response to your letter dated March 25, 1994 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, in which you request that the Division permit "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), to file notices of claims for relief under Rule 4.7(a) and (b) in connection with a commodity pool (the "Pool") it intends to operate. Your request for relief relates to the participation in the Pool of two persons who are not "qualified eligible participants" ("QEPs") as that term is defined in Rule 4.7.^{1/}

Based upon the representations made in your letter, as supplemented, we understand the facts to be as follows. "X" is in the process of forming the Pool. Each of the Pool's investors will be a QEP, except for "A", the president of "X", and "B", the vice president of "X".

With respect to these two non-QEP investors your letter states:

As two of the founders of "X" [in 1991], "A" and "B" have been directly and personally involved in all of "X"'s investment manage-

^{1/} Rule 4.14(a)(4) provides an exemption from CTA registration for a person who is registered as a CPO and whose commodity interest trading advice is directed solely to and for the sole use of the pools for which it is registered. Inasmuch as "X" intends to have clients in addition to the Pool and for which it will not serve as the CPO if the client is a commodity pool, "X" has not sought to claim the relief from CTA registration in Rule 4.14(a)(4). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

ment activities and have complete access to all of "X"'s records regarding those activities. In addition, their ongoing responsibilities at "X" have required both "A" and "B" to play active roles in the day-to-day management of "X"'s affairs at all levels and will require them to be directly involved with the operation of the Pool. "A" will be primarily responsible for the portfolio and risk management of the Pool, including in particular the development and implementation of investment, trading and risk management strategies. "B", who created and manages all of "X"'s analytical and quantitative research systems, will have responsibility for the application of those systems with respect to the Pool.^{2/}

In support of your request you state that "X" will disclose to all QEP investors in the Pool that: (1) "A" and "B" are participating in the Pool as non-QEPs; and (2) "X" intends to treat "A" and "B" as QEPs, the Pool as an exempt pool under Rule 4.7(a) and the account of the Pool as an exempt account under Rule 4.7(b). Moreover, you state that "A" and "B" will consent in writing to their being treated as QEPs.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" if it files a Rule 4.7(a) notice of claim for exemption as the CPO of the Pool and a Rule 4.7(b) notice of claim for exemption as the CTA of the Pool, notwithstanding the participation in the Pool of "A" and "B".^{3/} This position is, however, subject to the condition that "X" provide in writing to us the name of the Pool as soon as practicable after the name is selected.

This letter is based on the representations made in your letter, as supplemented, and is subject to compliance with the condition set forth above. Any different, changed or omitted

^{2/} Prior to his involvement with "X", "A" had significant experience with mortgage-backed securities and derivatives at "Y" (from 1987 to 1989) and "Z" (from 1989 to 1991). "B" similarly had significant experience with structured finance at "W" (from 1986 to 1988) and risk management and options pricing, among other things, at "Z" (from 1988 to 1991).

^{3/} Thus, and as you have requested, this position is applicable to the Rule 4.7(b) notice "X" filed with the Commission on September 27, 1993.

facts or circumstances might cause 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" or "A" and "B", including their positions and the extent of their involvement with "X", change in any way from those as represented to us.

This letter relieves "X" solely from certain requirements under Rules 4.7(a) and (b) in connection with certain participants in the Pool and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act"), 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992) or the Commission's regulations thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, the reporting requirements for traders in Parts 15, 18 and 19, and to all other provisions of Part 4.

Further, this letter represents the position of this Division only. It does not necessarily reflect the position of the Commission or any other office or division of the Commission. If you have any questions concerning the foregoing, please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel