



COMMODITY FUTURES TRADING COMMISSION

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94-88

DIVISION OF
TRADING AND MARKETS

August 30, 1994

Re: Rule 4.7 -- Request to Maintain Non-QEPs in Exempt Pool

Dear :

This is in response to your letters dated July 26, 1994 and August 17, 1994, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"). By your letters, as supplemented by telephone conversations with Division staff, you request relief under Rule 4.7(a)^{1/} on behalf of "X", a registered commodity pool operator ("CPO"), in connection with "X's" operation of (the "Securities Group") and (the "Investment Group") (collectively, the "Partnerships"). Your request for relief relates to the participation in the Partnerships of persons who are not "qualified eligible participants" ("QEPs") as that term is defined in Rule 4.7(a)(1)(ii).

Based upon the representations made in your letters, as supplemented, we understand the relevant facts to be as follows. "X" is a limited partnership whose general partner is "Y" and whose sole limited partner is "A". "A" is also the sole shareholder of "Y". "X" is the CPO and sole general partner of the Securities Group and the Investment Group. The Securities Group was formed in December 1992 to invest primarily in securities and financial instruments but it is also authorized to trade commodity futures contracts and options on commodity futures contracts. The Securities Group presently has seven limited partners and total assets of approximately \$75 million. The Investment Group, originally formed in September 1989 and reorganized in December 1992, also invests principally in securities and trades in commodity futures contracts for hedging purposes. The Investment

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

Group has ten limited partners and total assets of approximately \$295 million.^{2/}

"X" qualifies in all respects for relief under Rule 4.7 in connection with its operation of the Securities Group and the Investment Group but for the fact that four individuals who are limited partners of both Partnerships are not QEPs. With respect to these non-QEPs, you represent that all four individuals are capable of evaluating the merits and risks of an investment in the Partnerships and that each of the four is an "accredited investor" as that term is defined in Regulation D of the Securities Act of 1933, as amended. You represent further that the four non-QEPs were limited partners in the Securities Group at the time of its formation and in the Investment Group subsequent to its formation but prior to its reorganization. You also represent that three of the non-QEPs were employed by "X" at the time they purchased their respective interests in the Partnerships,^{3/} and that the fourth non-QEP is a "prominent attorney with extensive experience negotiating complex transactions" who is a first cousin of "A".

In support of your request you represent that the capital accounts of the four non-QEPs represent 1.01% of the Securities Group's total capital and 0.80% of the Investment Group's total capital, and that the Partnerships will not admit any additional limited partners who are not QEPs without the consent of the Division.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "X", solely based on the presence of the four individual non-QEPs discussed above, if "X" complies with the requirements of Rule 4.7(a)^{4/} in lieu of the disclosure, reporting and recordkeeping requirements of

^{2/} The Securities Group is a limited partner of the Investment Group and in such capacity has made contributions to the Investment Group that amount to 9.94% of the Investment Group's total assets.

^{3/} Two of these individuals were listed as principals of "X" and the third individual was employed as "X's" chief financial officer at the time they purchased their respective interests in the Partnerships. One of the principals and the chief financial officer continue to be employed by "X" in such positions. The principal who departed "X" currently serves as the chief executive officer of another securities investment partnership.

^{4/} This includes compliance with the procedure contemplated by Rule 4.7(a)(3)(i)(I)(2) for pools in which participations have been sold prior to the filing of a Rule 4.7 notice of claim for exemption.

Rules 4.21, 4.22 and 4.23, respectively. This relief is conditioned, however, on the four individual non-QEPs of the Partnerships duly consenting to being treated as QEPs. In accordance with this position, the Rule 4.7 notice of claim for exemption previously filed with the Commission by "X" in connection with its operation of the Securities Group is hereby deemed effective and a similar such notice that is to be filed by "X" in connection with its operation of the Investment Group will be effective upon receipt by the Commission, provided that the other requirements of Rule 4.7 are complied with.^{5/}

This letter is based upon the representations that you have made to us and is subject to compliance with the conditions 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 that the operations or activities of "X" or the Partnerships change in any way from those represented to us.

The relief granted by this letter is applicable to "X" solely in connection with its operation of the Partnerships. This letter does not excuse "X" from compliance with any otherwise applicable requirements of the Commodity Exchange Act (the "Act")^{6/} or the Commission's regulations thereunder. For example, "X" remains subject to the antifraud provisions of Section 40 of the Act,^{7/} to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other applicable provisions of Part 4. Furthermore, this letter does not change or excuse "X"'s duty to clarify the Partnerships' offering memorandum with respect to its use of proceeds description as had been previously discussed between "B" of your firm and Division staff.

^{5/} On July 26, 1994, you filed a Rule 4.7 notice of claim for exemption with the Commission on behalf of "X" in connection with its operation of the Securities Group. This notice was not effective upon receipt by the Commission because of the four non-QEPs' participation in the Securities Group.

To date, the Commission has not received a Rule 4.7 notice of claim for exemption on behalf of "X" in connection with its operation of the Investment Group. The relief granted by this letter does not excuse "X" from filing this notice.

^{6/} 7 U.S.C. § 1 et seq (1988 & Supp. IV 1992).

^{7/} 7 U.S.C. § 60 (1988 & Supp. IV 1992).

Page 4

This letter represents the position of this Division only and does not necessarily reflect the position 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) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel