



COMMODITY FUTURES TRADING COMMISSION

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94-66

DIVISION OF
TRADING AND MARKETS

July 7, 1994

Re: Request for Relief from Rule 4.7

Dear :

This is in response to your letter dated April 28, 1993, as supplemented by telephone conversations with Division staff, in which you request that the Division permit "X" to claim relief under Rule 4.7(a)^{1/} with respect to (the "Fund") under the circumstances set forth in your letter, as supplemented.

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund was established in July 1993 to invest in securities and presently has five limited partners. "X", the sole general partner of the Fund, is a limited partnership. Its general partner is "Y", a Delaware corporation, whose shares are owned as follows: forty percent each by you and your brother "A", fifteen percent by Professor "B" and five percent by Professor "C". You are the president of "Y" and the only limited partner of "X". "X" wishes to register as a commodity pool operator ("CPO"), claim relief under Rule 4.7 for the Fund, and trade commodity interests on behalf of the Fund.^{2/} Rule 4.7 provides registered CPOs with certain relief from the Commission's Part 4 requirements in connection with specified pools sold only to "qualified eligible participants" ("QEPs"), as that term is defined in the rule. You represent that no person who is not a QEP will be accepted as a new participant in the Fund. Once registered as a CPO, "X" would be eligible to claim relief under Rule 4.7 for the Fund, but for the fact that the Fund's existing limited partners are not QEPs. You further represent that, prior to "X"'s claiming relief under Rule 4.7, each of the Fund's

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

^{2/} You represent that "X" will not engage in any commodity interest transactions until it is registered as a CPO.

participants will have consented in writing to "X" filing a notice of claim for exemption for the Fund and being treated as a QEP.

The current participants in the Fund are you and "A", "Z", a general partnership whose general partners are you, "A" and your six siblings,^{3/} and Professors "B" and "C", each a professor at the Harvard Business School. You and "A" will each register as an associated person of "X" and will solicit participants for the Fund. Each of you holds an M.B.A. from the Harvard Business School. You have held positions in leveraged buyout groups at merchant and investment banking firms and "A" has been an international fund accountant in the mutual fund division of a national bank. Professor "B" is an accredited investor as defined in Regulation D under the Securities Act of 1933 who has known you for six years, commencing when you were a student at Harvard University. Professor "B" has published academic research relating to the use of derivatives and has taught the subject of derivatives to M.B.A. students and investment professionals. He has traded futures contracts for his own account and also with Professor "C". Professor "C" also has published works on investments, including futures, in academic and other publications and has performed consulting and professional education services for investment banks, brokers, dealers and other financial professionals.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" if "X" files a notice of claim for relief under Rule 4.7 for the Fund, despite the fact that the five existing limited partners of the Fund are not QEPs, and treats such limited partners as QEPs. This position is subject to the conditions that prior thereto, "X" becomes duly registered as a CPO and receives the written consent of each current limited partner in the Fund who is not a QEP to being treated as a QEP.

^{3/} The Partnership was funded by a loan of one million dollars from the parents of its partners. This loan is secured by an interest-bearing note from "Z" to the partners' father, "D", who has a security interest in "Z's" assets. "D", who is an attorney and a QEP with substantial investment experience, acts as "Z's" adviser. In this regard, you have represented that in the event he could be deemed to be a commodity trading advisor ("CTA"), "D" would rely upon the exemption from CTA registration for a person who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who has not held himself out generally to the public as a CTA. See Section 4m(1) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §6m(1) (1988 & Supp. IV 1993).

This letter is based on the representations provided 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 the operations or activities of the Fund, "X" or the other persons and entities referred to above change in any way from those as represented to us.

We note that this letter relieves "X" solely from certain Rule 4.7 requirements and does not excuse it from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. 1992), 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.

This letter represents the views of this Division only and does not necessarily represent the views of the Commission or of 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,

Andrea M. Corcoran
Director