

95-07



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

December 22, 1994

Re: Rule 4.7 -- Request to Treat a Foundation
as a Qualified Eligible Participant

Dear :

This is in response to your letter dated December 6, 1994, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). By your letter you request confirmation that "A" and "B", registered commodity pool operators ("CPOs"), may continue to claim relief under Rule 4.7^{1/} in connection with the operation of (the "Partnership") in the event that a new limited partner which is not a qualified eligible participant ("QEP"), as defined in Rule 4.7, is admitted as a limited partner of the Partnership.

Based upon the representations made in your letter, we understand that the facts are as follows. The Partnership commenced operation as an investment limited partnership on January 1, 1994. Messrs. "A" and "B" are the registered CPOs and general partners of the Partnership (the "General Partners"). The Partnership is a private partnership which seeks to achieve appreciation with diversification of risk pursuant to a multi-manager, multi-strategy investment program. As of October 31, 1994, it had net capital of approximately \$254 million under management. All of its limited partners are QEPs. The General Partners filed a Notice of Claim for Exemption pursuant to Rule 4.7 in connection with their operation of the Partnership.

The "Foundation", a non-QEP proposed investor, wishes to be admitted as a limited partner of the Partnership, effective as of January 1, 1995. The Foundation is an organization described in Section 501(c)(3) of the Internal Revenue Code. The directors of the Foundation are "C" and "D", husband and wife, and their daughter, "E", each of whom is a QEP as defined in Rule 4.7. The Foundation does not fall within the definition of a QEP because it does not have investments of \$2 million in value and its total assets are less than \$5 million.

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

In support of your request you explain that the Foundation, whose assets totalled approximately \$1.2 million on December 1, 1994, was established solely for the purpose of making charitable contributions and incurs no expenses other than accounting expenses. All investment decisions on behalf of the Foundation are made by "C" who, as noted above, is a QEP. "C", "D" and "E" each have consented to the treatment of the Foundation as a QEP with respect to its investment in the Partnership.

Based upon the representations made in your letter, the Division believes that your request has merit. Accordingly, the Division will not recommend that the Commission take any enforcement action against the General Partners for failing to comply with the QEP criteria of Rule 4.7 with respect to the Foundation if they allow the Foundation to invest in the Partnership and treat the Foundation as a QEP.

This letter is based on the representations made in your letter. 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 Foundation or the Partnership change in any way from those as represented to us.

We note that this letter relieves the General Partners solely from the QEP criteria of Rule 4.7 with respect to participation of the Foundation in the Partnership and does not excuse the General Partners from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992) ("Act"), or in the Commission's regulations issued thereunder. For example, the General Partners remain subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. 6o (1988 & Supp. IV 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.

Further, 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 Myra Silberstein, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel