

CFTC Letter No. 97-32**April 23, 1997****Division of Trading & Markets**

Re: Rule 4.7(a)(1)(ii)(B)(2)(xi)--Request for Relief from the Ten Percent Limitation on Investment

Dear :

This is in response to your letter dated March 18, 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 relief on behalf of "U", a registered commodity pool operator ("CPO"), from the ten percent limitation on investment in Rule 4.7(a)¹ exempt pools imposed under Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation"), with respect to proposed investments in such 4.7 exempt pools by three non-exempt multi-manager pools, namely, "V", "W" and "X" (collectively, the "U" Multi-manager Pools"). Specifically, you request relief from the Ten Percent Limitation only with respect to the investment by the "U" Multi-manager Pools in Rule 4.7(a) exempt pools for which "U" also serves as the general partner and CPO (the "U" 4.7 Pools").

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. Each of the "U" Multi-manager Pools follows a multi-manager investment approach, with "U" allocating the assets of the pools among numerous investment managers operating managed accounts and single-manager pools. Among the single-manager pools are certain "U" 4.7 Pools which primarily trade in securities. The "U" Multi-manager Pools qualify as QEPs under Rule 4.7(a) because they each satisfy the portfolio requirements of Rule 4.7(a)(1)(B) (1), have assets in excess of \$5 million and were not formed for the purpose of investing in exempt pools. However, because not all of the investors in the "U" Multi-manager Pools are qualified eligible participants ("QEPs"), the "U" Multi-manager Pools are subject to the Ten Percent Limitation.

As noted above, you have requested relief from the Ten Percent Limitation only as it applies to investment in the "U" 4.7 Pools. The Ten Percent Limitation would still apply to investments by the "U" Multi-manager Pools in non- "U" 4.7 exempt pools. In support of this request, you state that investors in the "U" Multi-manager Pools will receive the same disclosures and reports and "U" will comply with the same recordkeeping rules as if the "U" 4.7 Pools were non-exempt pools. In addition, the partnership agreements of the "U" 4.7 Pools require annual audited financial statements, which "U" will prepare in accordance with Rule 4.22. "U" provides and will

continue to provide monthly reports which comply with Rule 4.22 to the investors in the “U” 4.7 Pools, and “U” follows (and will continue to follow if relief is granted) the recordkeeping rules set forth in Rule 4.23 for all pools for which it serves as the CPO. You further represent that if the requested relief is granted, “U” will notify all current investors in the “U” Multi-manager Pools of such relief and will give the investors an opportunity to redeem their investments before “U” allocates assets to the “U” 4.7 Pools pursuant to the relief.

The Division has previously granted relief from the Ten Percent Limitation where an investor pool qualified as a QEP but had non-QEP investors, the same entity was CPO of both the investor and investee pool, and the CPO remained subject to all disclosure and reporting requirements of Part 4 with respect to the investor pool.² Your request affords protection to the non-QEP investors in the “U” Multi-manager Pools because relief from the Ten Percent Limitation will be granted only for investment in “U” 4.7 Pools, all of which have the same general partner and CPO as the “U” Multi-manager Pools, the “U” 4.7 Pools will comply with the reporting and recordkeeping requirements of Rules 4.22 and 4.23 and “U” as the CPO of the “U” Multi-manager Pools will remain subject to all reporting and disclosure requirements of Part 4 with respect to the Multi-manager Pools.

Based upon the foregoing, and consistent with our prior practice, it appears that granting your request would not be contrary to the public interest and the purposes of Rule 4.7. Accordingly, subject to the condition set forth below, the Division confirms that it will not recommend that the Commission take any enforcement action for failure to comply with Rule 4.7(a) against “U” in connection with its operation of the “U” Multi-manager Pools solely based upon “U’s” investment of more than ten percent of the assets of any “U’s” Multi-manager Pool in a “U” 4.7 Pool. This position is subject to the condition that all investors and prospective investors in the “U” Multi-manager Pools receive the same disclosures and reports required under Part 4 and “U” complies with the same recordkeeping requirements applicable under Part 4 as if the “U” 4.7 Pools were non-exempt pools.

This letter does not excuse “U” from compliance with any other applicable requirements contained in the Commodity Exchange Act³ (the “Act”) or in the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules, and to all otherwise applicable provisions of Part 4.

The position taken herein is based upon the representations made to us, is subject to the condition stated herein, and is applicable to “U” only with respect to “U” Multi-manager Pools and “U” 4.7 Pools. 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 activities or composition of the “U” Multi-manager Pools, the “U” 4.7 Pools or “U” differ in any respect from those as represented to us.

Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996).

² CFTC Interpretive Letter No. 96-59, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,764 (July 23, 1996).

³ The Act is found at 7 U.S.C. §§ 1 et seq. (1994).