

CFTC Letter No. 00-03**December 27, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a)

Dear :

This is in response to your letter dated April 13, 1999, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated June 17, 1999, July 20, 1999, August 13, 1999, and December 20, 1999 and telephone conversations with Division staff. By your correspondence, you request continued exemptive relief on behalf of "X", a registered commodity pool operator ("CPO"), so that "X", in connection with its operation of the "Fund", may continue to be permitted to treat "Y" as if it satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a) for the purposes of its investment in the Fund.¹

Preliminarily, we note that by letter dated September 15, 1997 the Division permitted "X" to treat "Y" as a QEP for the purposes of its investment in the Fund ("Prior Letter").² The Division issued the Prior Letter based upon, among others, representations that each of the five members of "Y" was a trader or analyst for "Fund Manager", the Fund's management company; each member contributed a maximum of \$1,000 as initial capital to "Y" and was not permitted to invest additional amounts; and no additional members would be admitted to "Y" without the prior approval of the Division.

At the time of the Prior Letter, "A" was registered as a sole proprietor CPO and he served as the CPO of "Y" in this capacity. By the Prior Letter and based upon, among others, the foregoing representations, the Division relieved "A" from compliance with the specific requirements of Rules 4.21 through 4.26 in connection with his serving as the CPO of "Y". This relief similarly was conditioned upon no new members being admitted to "Y" without the prior approval of the Division. "A" has since withdrawn his sole proprietor CPO registration and "X" has become the CPO of "Y".

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" now wishes to admit "B", an employee of the Fund Manager and a Non-QEP, as a member of "Y". "B" has been employed by the Fund Manager as a

research analyst since March 1, 1999. His duties primarily consist of analyzing individual companies or groups of companies within an industry and providing to the Fund's portfolio managers his recommendations concerning the purchase or sale of the stock of such companies. "B" was employed by "Z" from September 1994 to February 1999, where he was a co-manager of "P" from January 1997 through February 1999. Although he is not a QEP, "B" is an accredited investor as that term is defined in Rule 501(a)(6) under the Securities Act of 1933.³

The purpose of Rule 4.7 is to "reduc[e] unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the rule, do not appear to need the full protections offered by the Part 4 framework."⁴ As noted above, "B" does not meet the applicable QEP criteria. However, as also noted above, "B": (1) is a research analyst for the Fund; (2) has over two years' experience as a research analyst and manager in the financial services industry; and (3) is an accredited investor under Rule 501(a)(6).

Based upon the foregoing representations, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(a). Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby confirms that "X" may continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding "B's" participation in "Y". Further, by the authority delegated under Rule 140.93(a)(1), "X" may also claim relief from the specific requirements of Rules 4.21 through 4.26 in connection with its operation of "Y".

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁵ and the Commission's regulations issued thereunder. For example, "X" remains subject to all of the antifraud provisions of the Act and the Commission's regulations, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and all otherwise applicable provisions of Part 4. Moreover, this relief is applicable to "X" solely in connection with its operation of the Fund and "Y", as discussed above.

This letter, and the relief provided by this letter, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render the relief provided by this letter void. You must notify us immediately in the event the operations or activities of "X", the Fund Manager, the Fund, or "Y", including the composition of participants, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Matthew W. Lisle, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

1 While your letter sought a “no-action” position under Rule 4.7(a), we are treating it as a request for exemption from the QEP criteria of Rule 4.7(a). Commission rules referred to herein are found at 17 C.F.R. Ch.1 (1999).

2 CFTC Staff Letter No. 97-86, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,183 (September 15, 1997). “X” filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) in connection with its operation of the Fund on _____.

3 17 C.F.R. § 230.501(a)(6) (1999) defines an “accredited investor” as a person who “had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.”

4 57 Fed. Reg. 3148 at 3150 (January 28, 1992). Among other things, Part 4 specifies disclosure, reporting and recordkeeping requirements for CPOs.

5 7 U.S.C. § 1 *et seq.* (1994).