

**CFTC Letter No. 00-04****December 23, 1999****Exemption****Division of Trading & Markets**

Re: Supplemental Request for Exemption from the QEP Criteria of Rule 4.7.

---

Dear :

This is in response to your letter dated August 25, 1999, to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”), as supplemented by your letters dated September 8, 1999, September 13, 1999 and telephone conversations with Division staff. By your correspondence, you request that the Division extend the exemption from the qualified eligible participant (“QEP”) criteria of Rule 4.7<sup>1</sup> issued by letter dated July 14, 1999 (the “Division Letter”) to “P”, a registered commodity pool operator (“CPO”), in connection with its operation of the “Partnership” to certain other partnerships that “P” operates and for which it seeks to trade commodity interests and thus to serve as their CPO (the “Other Partnerships”). Specifically, the Other Partnerships are: “Q”; “R”; “S”; and “T”.

In support of your request you represent, among other things, that: (1) as of July 31, 1999, the highest net asset value of any Other Partnership was \$515 million;<sup>2</sup> (2) as of July 31, 1999, at least 70 percent of the participants in each Other Partnership qualified as QEPs; (3) as of July 31, 1999, at least 94 percent of each Other Partnership’s capital was represented by QEPs; (4) each Other Partnership has been in operation for at least the past two years; (5) each Other Partnership will open a commodity interest trading account with “U”; and (6) “P”, each Other Partnership and “U” will follow all of the procedures and requirements set forth on pages 2 through 4 of the Division Letter – which you claim will mean that the non-QEP participants in each Other Partnership will not participate in investments by the Other Partnerships in commodity interests, will not share in any profits or losses attributable to such investments, and will not have any Other Partnership assets allocable to them subject to claim by “U”. Additionally, you represent that “P” will not seek additional relief like that requested for the Other Partnerships for any other partnerships it operates that have been in existence for less than two years at the time the relief is sought.

Based upon the foregoing representations, the Division confirms that “P” may claim the

relief available under Rule 4.7 in connection with its operation of the Other Partnerships and, under the authority delegated to it by Rule 140.93(a)(1), hereby exempts “P” from the requirement in Rule 4.7 that all participants in the Other Partnerships be QEPs. This exemption is, however, subject to the condition that “P” comply with the disclosure, reporting and recordkeeping requirements of Rule 4.7 with respect to each participant in each Other Partnership.<sup>3</sup>

This letter, and the exemption provided herein, are based upon the representations you have made to us and are subject to compliance with the condition set forth above. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event the activities or operations of “P” or any Other Partnership change in any material way from those represented to us.<sup>4</sup> Further, this letter does not excuse “P” from compliance with any other applicable requirements contained in the Commodity Exchange Act (“Act”) <sup>5</sup> or the Commission’s rules issued thereunder. For example, it remains subject to all antifraud provisions of the Act and the Commission’s rules, to the reporting requirements for traders set forth in Parts 15, 18 and 19 and to all other applicable provisions of Part 4.<sup>6</sup> Finally, this letter is applicable to “P” solely in connection with its operation of the Partnership.

If you have any questions concerning this letter, please contact Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

2 The numbers set forth in items (1) through (4) are approximations of actual amounts.

Because its arrangements with “U” concerning the Other Partnerships might implicate Rule 1.56, for the reasons provided in the Division Letter at n. 5, page 3, the Division will not recommend that the Commission commence any enforcement action against “U” for failure to comply with Rule 1.56 with respect to the Other Partnerships.

In particular, if the percentage of capital of an Other Partnership attributable to persons who are QEPs materially decreases, the Partnership transacts business with a different futures commission merchant or the nature of any of the agreements with “U” and “P” changes, the exemption granted herein likely would be void.

7 U.S.C. § 1 *et seq.* (1994).

Similarly, the no-action position taken herein with respect to “U” is based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render this position void and you must notify us immediately in the event the terms of any arrangement concerning an Other Partnership change in any material way from those represented to us. Further, this letter does not excuse “U” from compliance with any other applicable requirements contained in the Act and the Commission’s rules and it is applicable to “U” solely in its capacity as the FCM of the Other Partnerships.