

CFTC Letter No. 00-05**December 30, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7 – Request for Exemption from the QEP Criteria of Rule 4.7(a).

Dear :

This is in response to your letter dated December 10, 1999, as supplemented by the electronic mail message of your associate, sent December 22, 1999. By your correspondence, you request on behalf of “X”, a registered commodity pool operator (“CPO”), that the Division permit “X”, in connection with its operation of the “Fund”, to treat certain persons as if they satisfy the qualified eligible participant (“QEP”) criteria of Rule 4.7(a).

Based upon the representations made in the correspondence, we understand the facts to be as follows. “X” serves as the CPO of the Fund. Pursuant to a Notice of Claim for Exemption under Rule 4.7(a),¹ interests in the Fund may be sold only to QEPs. “X” now seeks an exemption to permit the following persons (the “Non-QEPs”) to participate in the Fund:

1. “A”, who is an “accredited investor” pursuant to Rules 501(a)(5) and 501(a)(6) under the Securities Act of 1933.² Since 1994, “A” has worked at “Y”, where he is an analyst/trader for “Y’s” risk arbitrage investment vehicles.
2. “B”, who is an “Executive Officer” of the Fund and a “knowledgeable employee” as those terms are defined in Section 3c-5 under the Investment Company Act of 1940. Since January 1999, “B” has been employed as Technology Manager by “X”. Previously, from June 1992 through December 1998 “B” worked in the Financial Services Division of Integrated Business Systems, most recently as Manager of Systems Implementation.

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.”³ While neither “A” nor “B” meet the QEP criteria of the rule, as noted above: (1) “A” is an accredited investor and he has been employed as a securities analyst/trader for at least the

past two years; and (2) “B” is an Executive Officer and a knowledgeable employee of “X” since January of this year.

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 grants “X” an exemption permitting it to treat the Non-QEPs as QEPs and to continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding the Non-QEPs’ investment in the Fund.

This letter does not excuse “X” from compliance with any other applicable requirements contained in the Commodity Exchange Act⁴ (the “Act”) 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, as discussed above.

This letter, and the exemption granted herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activities of “X” or the Fund, including the composition of investors in the Fund, change in any material way from those as represented to us.

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

Very truly yours,

John C. Lawton

Acting Director

1 “X” filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) with respect to its operation of the Fund on _____.

2 “A” has a net worth in excess of \$1,000,000 and he has had income in excess of \$200,000 in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year.

3 57 Fed. Reg. 3148 at 3150 (January 28, 1992). Among other things, Part 4 specifies disclosure,

reporting and recordkeeping requirements for CPOs.

47 U.S.C. §1 *et seq.* (1994).