

**CFTC Letter No. 00-06****December 22, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemption to Treat Certain Employees as QEPs

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Dear :

This is in response to your letter dated August 30, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated September 21, 1999 and telephone conversations among you, your colleagues, "A" and "B", and Division staff. By your correspondence, you request an exemption on behalf of the "Company", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), that serves as the operator of and advisor to the "Fund", so that two employees of the Company, "B" and "C", may be treated as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>1</sup> For the reasons set forth herein, the Division grants the exemption with respect to "B", and denies the exemption with respect to "C".

Based upon the representations you made in your correspondence, we understand the facts to be as follows. You are the sole proprietor of the Company, a Wisconsin limited liability company formed in 1997. The Fund is operated pursuant to the criteria of Rule 4.7(a).<sup>2</sup> Accordingly, interests in the Fund are sold only to QEPs. The Fund is trading in a total of 25 different markets and follows a technical trading program developed by you and "B", the Director of Software Development and Information Technology.

Considered a "key" employee, "B" has served as Director of Information and Technology since November 1997. As Director of Information and Technology, "B" is responsible for software development for the Company. He researches historical price data for all of the commodities traded by the Fund and has built computer models based primarily on this research. The technical trading program developed by you and "B" provides the overall portfolio strategy for the Fund. In support of your request, you represent that "B" will consent in writing to be treated as a QEP for the purposes of Rule 4.7(a).

Based upon the foregoing, 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

to it under Rule 140.93(a)(1), the Division hereby grants the Company an exemption such that it may treat "B" as a QEP and continue to claim relief pursuant to Rule 4.7(a) notwithstanding his investment in the Fund.

You also request an exemption to permit the Company to treat "C" as a QEP. A trader for the Company since September 1997, "C" is primarily responsible for trading in the European markets. Although "C" has some discretion in the timing of offsetting positions, he has no discretion to place trades, which are placed in accordance with trading signals generated by the Fund's technical trading program. While "C" has had some role in developing an automated trading system, that system was employed for trading the Company's proprietary account, and it is no longer being traded. Finally, "C" is not an accredited investor pursuant to Regulation D under the Securities Act of 1933.

Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby denies the Company's request for exemption from the QEP criteria of Rule 4.7(a) with respect to "C".

The relief granted by this letter does not excuse the Company from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations issued thereunder. For example, the Company remains subject to all 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 regulations, and all other provisions of Part 4. Moreover, this letter is applicable to the Company 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 this exemption void. You must notify us immediately in the event the operations or activities of the Company or the Fund, including the composition of the 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 Helene D. Schroeder, an attorney on my staff, 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 Commission records indicate that the Company filed a Rule 4.7 Notice of Claim of Exemption with

respect to the Fund on \_\_\_\_\_.