

CFTC Letter No. 00-14**January 28, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(b); Request to Treat "X" as a Qualified Eligible Client

Dear :

This is in response to your letter dated November 16, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated December 30, 1999, and telephone conversations with Division staff. You request, on behalf of "Y", a registered commodity trading advisor ("CTA"), an exemption from Rule 4.7(b),¹ such that "Y" may treat the "Fund" as if it satisfies the qualified eligible client ("QEC") criteria of the rule.²

With respect to a commodity pool, Rule 4.7(b) provides that a pool is a QEC if it has total assets in excess of \$5,000,000, among other criteria. A pool may also be a QEC if all of its unit owners or participants, other than the CTA claiming relief under the rule, separately qualify as QECs.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Fund is organized as a limited partnership under Regulation D of the Securities Act of 1933. "Z" serves as the general partner and registered commodity pool operator ("CPO") of the Fund, and "Y" is the CTA of the Fund. The total amount invested in the Fund is currently \$300,000, which falls short of the \$5,000,000 minimum total assets required for the Fund to qualify as a QEC.

The Fund's two current limited partners are "A", a principal and the sole shareholder of "Y", and "B", a principal of "Z". In light of the limited partners' positions, and their firms' involvement in the Fund's operations, it appears your request for relief on behalf of "Y" with respect to the Fund as currently constituted has merit. Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants "Y" an exemption permitting it to treat "A" and "B" as QECs for the purpose of treating the Fund as a QEC

and to claim relief pursuant to Rule 4.7(b) with respect to its advising the Fund.

You also represent, however, that the Fund is an ongoing offering to which "Z" hopes to attract additional limited partners, who may not necessarily be QECs. In this regard, you seek on behalf of "Y" a further exemption to permit it to treat the Fund, with such additional limited partners, as a QEC. In support of "Y's" claim for relief, you represent that as a Regulation D offering, the Fund will be limited to accredited investors, as defined in Rule 501 under the Securities Act of 1933.³

Based on the foregoing representations, the criteria for additional limited partners in the Fund fall short of the QEC requirements set forth by the rule, thereby precluding the limited partners from being separately deemed QECs pursuant to Rule 4.7(b)(ii)(D). To qualify as a natural person QEC, a limited partner must be an accredited investor *and* must meet certain portfolio requirements. "Y" has not demonstrated that these portfolio requirements would be met under "Z's" current criteria, nor has "Y" presented other facts or circumstances that would support "Y's" request to treat such additional limited partners as if they satisfy the QEC criteria of Rule 4.7(b). Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby denies "Y's" request for exemption from the QEC criteria of Rule 4.7(b) with respect to additional limited partners of the Fund.

The relief granted by this letter does not excuse "Y" from compliance with any applicable requirements contained in the Commodity Exchange Act ("Act") or in the Commission's regulations issued thereunder. For example, "Y" 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 otherwise applicable provisions of Part 4. Moreover, this letter is applicable to "Y" solely in connection with its advising 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 that the operations or activities of "Y", "Z", or the Fund itself, including the composition of the investors in the Fund, change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Ky Tran-Trong, 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 "Y" filed a Notice for Claim of Exemption pursuant to Rule 4.7(b) with respect to its advising the Fund on _____.

3 *See* 17 C.F.R. § 230.501 (1999).