

CFTC Letter No. 00-16**January 28, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) - Request for Exemptive Relief to Treat Certain Principals as Qualified Eligible Participants

Dear :

This is in response to your letter dated January 6, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request continued and additional exemptive relief from Rule 4.7(a)¹ on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), to permit "X", in connection with its operation of certain commodity pools ("Pools"), to treat certain of its employees ("Investors") as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a). In addition, you request exemptive relief to permit "X" to treat the Pools as if they satisfy the QEP criteria of Rule 4.7(a)(1)(ii)(D) ("Ten Percent Limitation"), which would allow "X" to invest more than ten percent of the assets of the Pools in other Rule 4.7(a) exempt pools.

Preliminarily, we note that by letter dated December 31, 1998 the Division permitted "X" to treat four non-QEP Investors ("Existing Non-QEP Investors")² as QEPs and to claim relief pursuant to Rule 4.7(a) with respect to three Pools ("Existing Pools"),³ notwithstanding the participation of these persons in those Pools ("Prior Letter"). By the Prior Letter the Division also exempted "X" from the Ten Percent Limitation with respect to its operation of the Existing Pools. The Division issued the Prior Letter based upon, among others, representations that each of the Existing Non-QEP Investors was listed as a principal of "X", was registered as an associated person ("AP") of "X" and was an accredited investor under Regulation D of the Securities Act of 1933. The representations you made in support of the issuance of the Prior Letter have remained accurate in all material respects, except that one of the Pools for which "X" was granted relief by the Prior Letter has been terminated.⁴

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pools are operated pursuant to the criteria of Rule 4.7(a), and accordingly, interests in the Pools may be sold only to QEPs. "X" wishes to admit the Existing Non-QEP Investors into three additional Pools ("New Pools").⁵ It also wishes to admit "A", a listed principal and registered AP of "X" and a non-QEP,

as an Investor in all of the Pools. Because he is an "Executive Officer" of "X", "A" is a "knowledgeable employee" as that term is defined in Section 3c-5 under the Investment Company Act of 1940. Since September 1995, "A" has served as a Vice President and the Controller of "X" and is responsible for the management of all accounting and finance activities. Finally, "X" wishes to invest more than ten percent of the assets of each Pool in other Rule 4.7(a) exempt pools, notwithstanding the presence of the Non-QEP Investors in a Pool.

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."⁶ While "A" does not meet the applicable QEP criteria, like the Existing Non-QEP Investors, he is a listed principal and registered AP of "X". He also is a knowledgeable employee of the Pools.

Based upon the foregoing, it appears that granting your requests 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: (1) grants "X" an exemption permitting it to treat the Existing Non-QEP Investors as QEPs and to claim relief pursuant to Rule 4.7(a) with respect to the New Pools, notwithstanding the Existing Non-QEP Investors' investments in the New Pools; and (2) grants "X" an exemption permitting it to treat "A" as a QEP and to continue to claim relief pursuant to Rule 4.7(a) with respect to the Existing Pools and to claim relief pursuant to Rule 4.7(a) with respect to the New Pools, notwithstanding "A's" investment in the Pools. In addition, and by the authority delegated under Rule 140.93(a)(1), the Division exempts "X" from the Ten Percent Limitation of Rule 4.7(a)(1)(ii)(D) in connection with its operation of the Pools.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act⁷ ("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 Pools, as discussed above.

This letter, and the exemptions granted herein, are based upon the representations that have been made to us. Any different, changed or omitted material facts or circumstances might render the exemptions void. You must notify us immediately in the event the operations or activities of "X" or the Pools, including the composition of the investors in the Pools, 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 The Existing Non-QEP Investors are "B", "C", "D" and "E".

3 The Existing Pools are "T", "U" and "V".

4 This Pool was "W".

5 The New Pools, and the dates on which "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7 (a) with respect to these Pools, are as follows: "P", _____; "Q", _____; and "R", _____.

6 57 Fed. Reg. 3148 at 3150 (January 28, 1992). Among other things, Part 4 specifies disclosure, reporting and recordkeeping requirements for CPOs.

7 7 U.S.C. § 1 *et seq.* (1994).