

CFTC Letter No. 00-20**February 16, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a)

Dear :

This is in response to your letter dated January 20, 2000, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). 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 two Delaware business trusts (the "Funds"), to treat an investor as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹

Preliminarily, we note that by letter dated November 21, 1997 the Division permitted "X", which at the time had been named "Y", to treat its Chief Operating Officer ("COO") as a QEP ("Prior Letter").² The Division issued the Prior Letter based upon, among other factors, the COO's employment with "X" and "X's" parent company, the COO's status as an "accredited investor" as that term is defined in Rule 501(a)(6) under the Securities Act of 1933³ and the COO's status as the Tax Matters Partner ("TMP") of the Funds.⁴

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" has substituted "A" as the TMP of the Funds. Although he is not a QEP, "A" is the Chief Administrative Officer ("CAO") of "X" and is a "knowledgeable employee" as that term is defined in Rule 3c-5 under the Investment Company Act of 1940 ("ICA").⁵

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 As noted above, "A" does not meet the applicable QEP criteria. However, as also noted above, "A" is a "knowledgeable employee" as that term is defined under Rule 3c-5 of the ICA.

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 "A" as a QEP and to continue to claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding "A's" participation in the Funds.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁷ 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 Funds, as discussed above.

This letter, and the relief provided by this letter, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render the relief provided by this letter void. You must notify us immediately in the event the operations or activities of "X" or the Funds, including the composition of participants, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Matthew W. Lisle, 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.1 (1999).

2 CFTC Staff Letter No. 97-92, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,196 (November 21, 1997). "X" filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) in connection with its operation of the Funds on November 14, 1997.

3 17 C.F.R. § 230.501(a)(6) (1999) defines an "accredited investor" as a person who "had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year."

4 The TMP represents the Funds in administrative proceedings before the Internal Revenue Service.

Under Section 6231(a)(7) of the Internal Revenue Code, the TMP must purchase at least one unit in each Fund that the TMP represents.

5 17 C.F.R. § 270.3c-5 (1999).

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).