

CFTC Letter No. 00-28**March 10, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a): -- Request for Exemption to Permit
Employee to Invest in a Rule 4.7 Exempt Pool and from the
Ten Percent Limitation on Assets Invested in Exempt Pools.

Dear :

This is in response to your letter dated September 29, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated February 22, 2000 and telephone conversations with Division staff. By your correspondence, you request an exemption from Rule 4.7(a)¹ on behalf of "X", a registered commodity pool operator ("CPO") that serves as the CPO and general partner of the Fund, so that "X" may treat one of its employees, for purposes of investment in the Fund, as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a). You also seek relief from the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) in connection with "X's" operation of the Fund.

Based upon the representations you made in your correspondence, we understand the facts to be as follows. The Fund is operated pursuant to an effective Claim for Exemption under Rule 4.7(a) filed on _____.² Thus, interests in the Fund may be sold solely to QEPs. "X" requests exemptive relief to permit it to treat its vice-president, "A", as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).

"X" has only two other employees: "B", the father of "A" and the president of "X" and co-founder of the Fund, and one administrative assistant. "A" has been the vice-president of "X" since June 1996, and is responsible for the selection and monitoring of the investment managers to whom the Fund allocates assets. Additionally, he is a "knowledgeable employee" within the meaning of Rule 3c-5 under the Investment Company Act of 1940 ("ICA").³

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."⁴ As noted above, "A" does not meet the applicable QEP criteria. However, as also noted above, he is a "knowledgeable employee" as that term is defined

under Rule 3c-5 of the ICA,⁵ and he is the son of the president of "X" and co-founder of the Fund.

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).⁶ 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 continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding "A's" investment in the Fund. Further, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants "X" an exemption permitting it to invest more than ten percent of the fair market value of the assets of the Fund in other Rule 4.7(a) exempt pools.

This letter does not excuse "X" 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, "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 regulations, and all other provisions of Part 4. Moreover, this letter is applicable to "X" solely in connection with its serving as the CPO of the Fund, as discussed above.

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

If you have any questions concerning this correspondence, please contact Andrew Shipe, 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 fund was originally named "Y", and was operated by "Z". It has since been re-named. "X" purchased the Fund's general partnership interest on December 31, 1995.

3 17 C.F.R. § 270.3c-5 (1999).

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

5 For the purposes of this letter the Division is accepting as true, and is not making any independent finding, that "A" is a "knowledgeable employee."

6 The Commission recently has proposed revisions to Rule 4.7 that would include, among other persons, "knowledgeable employees" as defined in Rule 3c-5 under the ICA in the QEP definition. See 65 Fed. Reg. 11253, 11258-59 (March 2, 2000).