

CFTC Letter No. 00-33**March 10, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a); -- Request for Exemption to Permit
Employees to Invest in a Rule 4.7 Exempt Pool

Dear :

This is in response to your letter dated February 10, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). 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 general partner and CPO of the Fund, so that "X" may treat certain employees ("Non-QEP Investors") of "X's" affiliate, for purposes of investment in the Fund, as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).²

Based upon the representations 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 _____. Thus, interests in the Fund may be sold only to QEPs. "X" requests exemptive relief to permit it to treat the Non-QEP Investors, each of whom qualifies as a "knowledgeable employee" within the meaning of Rule 3c-5 under the Investment Company Act of 1940 ("ICA"),³ as QEPs with respect to an investment in the Fund.⁴ Specifically, you represent that each of the Non-QEP Investors is an employee of "Y", a registered CPO and commodity trading advisor ("CTA"), which is an affiliate of "X" and provides administrative and managerial services to the Fund.

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."⁵ While none of the Non-QEP Investors meet the applicable QEP criteria, each of them is a knowledgeable employee.

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 such that it may treat the proposed Non-QEP Investors as QEPs and continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding the investments of the Non-QEP Investors in the Fund.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act⁷ ("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, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all otherwise applicable provisions of Part 4. Moreover, this relief is applicable to "X" 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 that the operations or activities of "X" or the Fund, 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 The Non-QEP Investors are "A", "B", "C", "D" and "E".

3 17 C.F.R. § 270.3c-5 (1999).

4 For the purposes of this letter, the Division is accepting as true, and is not making any independent finding, that the Non-QEP Investors are "knowledgeable employees."

5 57 Fed. Reg. 3148, 3150 (Jan. 28, 1992). Among other things, Part 4 specifies disclosure, reporting and recordkeeping requirements for CPOs.

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 (Mar. 2, 2000).

7 7 U.S.C. § 1 *et seq.* (1994).