

CFTC Letter No. 00-63**May 12, 2000****Exemption****Division of Trading & Markets**

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

Dear :

This is in response to your letter dated April 12, 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 an exemption from Rule 4.7(a)¹ on behalf of "P", a registered commodity pool operator ("CPO") that serves as the general partner of "Q", "R", and "S" (collectively, the "Funds"), so that "P" may treat certain of its employees ("Non-QEP Investors"), for purposes of investment in the Funds, as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).²

Based upon the representations made in your correspondence, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(a).³ In reaching this position, the Division notes, in particular, your representation that each of the Non-QEP Investors qualifies as a "knowledgeable employee" within the meaning of Rule 3c-5 under the Investment Company Act of 1940 ("ICA").⁴ Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants "P" an exemption such that it may treat the Non-QEP Investors as QEPs and continue to claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding the investments of the Non-QEP Investors in the Funds.

This letter does not excuse "P" from compliance with any other applicable requirements contained in the Commodity Exchange Act⁵ ("Act"), or in the Commission's regulations issued thereunder. For example, "P" 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 "P" solely in connection with its operation of the Funds, 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 "P" or the Funds, including the composition of the investors in the Funds, 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" and "D".

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

4 17 C.F.R. § 270.3c-5 (1999). The Commission recently has proposed revisions to Rule 4.7 that would include, among other persons, "knowledgeable employees" in the QEP definition. *See* 65 Fed. Reg. 11253, 11258-59 (Mar. 2, 2000). 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 7 U.S.C. § 1 *et seq.* (1994).