

CFTC Letter No. 00-68**May 22, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a): Request for Exemption to Treat Certain
Employees as Qualified Eligible Participants

Dear :

This is in response to your letter dated January 21, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated March 13, 2000, your electronic mail transmissions dated March 21, 2000, March 31, 2000 and May 15, 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 of the "Fund", so that "X" may treat certain of its employees (the "Non-QEP Investors"),² for purposes of investment in the Fund, as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Fund, which began trading commodity interests in February 1999, is organized as a trust for which "X" serves as the managing member, and is operated as a benefit plan for certain "X" employees, *i.e.*, the Non-QEP Investors. "X" requests exemptive relief to permit it to treat the Non-QEP Investors, each of whom is 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.

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

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 Non-QEP Investors as QEPs and 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, and is subject to the condition that "X" files a Notice of Claim of Exemption pursuant to Rule 4.7(a) within ten business days of the date of this letter.

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. Further, this relief is prospective only.⁸ Because the Fund began operating prior to this grant of relief, nothing herein should be construed as limiting in any way the Commission's ability to institute enforcement proceedings or other action against "X" for any past violation of the Act or Commission regulations.

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", Managing Member, "B", Managing Member, "C", System Manager, and "D", Software Manager.

3 17 C.F.R. § 270.3c-5 (1999).

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

5 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."

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).

8 For example, "X" remains responsible for preparing and distributing an annual report for the fiscal year ending December 31, 1999 to the Fund's participants, and to file copies of the report with the Commission and the National Futures Association. "X" will be expected to timely comply with its annual reporting responsibilities in the future.