

CFTC Letter No. 00-71**May 26, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) - Request for Exemptive Relief to Treat
Investor as QEP

Dear :

This is in response to your letter dated April 25, 2000, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your e-mail dated May 16, 2000. By your correspondence, you request on behalf of "P", a registered commodity pool operator, that the Division permit "P", in connection with its operation of "Q" and "R" (collectively, the "Funds"), to treat an employee of "S", the parent organization of the majority owner and managing member of "P", as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a)¹. Specifically, the non-QEP investor is "A", an analyst for the Funds since January of 1998.

Based upon representations contained in your correspondence, including representations that "A" has over two years' experience in the financial services industry and is an accredited investor pursuant to Rule 501(a)(5) under the Securities Act of 1933,² it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(a).³ Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby confirms that "P" may continue to claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding the participation of "A" in the Funds.

This letter does not excuse "P" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁴ and 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, 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 "P" 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 "P" 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 "P" filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) on behalf of "Q" on _____ and on behalf of "R" on _____. Commission rules referred to herein are found at 17 C.F.R. Ch.1 (1999).

2 17 C.F.R. § 230.501(a)(5) (1999) defines an "accredited investor" as a person "whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000."

3 The Commission recently has proposed revisions to Rule 4.7 that would include in the QEP definition, among other persons, any employee of a Rule 4.7 exempt pool, CPO or an affiliate of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments), provided that such employee is an accredited investor as defined in Rule 501(a)(5) or (6) and has been employed in the financial services industry for at least 24 months. *See* 65 Fed. Reg. 11253, 11260 (Mar. 2, 2000).

4 7 U.S.C. § 1 *et seq.* (1994).