

CFTC Letter No. 00-81**July 5, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) - Request for Exemptive Relief so that the CPO May Treat Employees as QEPs

Dear :

This is in response to your letter dated May 1, 2000, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your e-mail dated June 27, 2000. By your correspondence, you request on behalf of "X", a registered commodity pool operator, that the Division permit "X", in connection with its operation of the Fund, to treat five employees of Fund Manager, as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a)¹. Specifically, the non-QEP investors are "A", "B", "C", "D", and "E" (collectively, the "Non-QEP Employees"), who are all employed by the Fund Manager as analysts.

Based upon representations contained in your correspondence, including representations that the Non-QEP Employees are "knowledgeable employees" as that term is defined in Rule 3c-5 under the Investment Company Act of 1940,² 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 grants "X" an exemption such that it may treat the Non-QEP Employees as QEPs and continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding the participation of the Non-QEP Employees in the Fund.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁴ and 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 Commission's regulations and 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 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 "X", the Fund

Manager or the Fund, including the composition of its 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

cc: Daniel A. Driscoll
Executive Vice President
National Futures Association

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1 "X" filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) on behalf of the Fund on _____. By letter dated February 5, 1998, the Division previously granted an exemption permitting "X" to claim relief from Rule 4.7(a) in connection with its operation of the Fund and "Y", notwithstanding investments by other non-QEP investors. Commission rules referred to herein are found at 17 C.F.R. Ch.1 (2000).

2 17 C.F.R. § 270.3c-5 (1999).

3 The Commission recently has proposed revisions to Rule 4.7 that would include in the QEP definition, among other persons, "knowledgeable employees" as defined in Rule 3c-5. *See* 65 Fed. Reg. 11253, 11260 (Mar. 2, 2000).

4 7 U.S.C. § 1 *et seq.* (1994).