

**CFTC Letter No. 00-88****September 11, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(b): Request for Extension of Time to Distribute and File Annual Reports Request for Relief from Books and Records Location Requirement

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Dear :

This is in response to your letter dated August 2, 2000, to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”). By your correspondence, you request on behalf of “P”, a registered commodity pool operator (“CPO”), that “P”: (1) be granted an extension of time in which to distribute and file the annual reports of “Q”, “R”, “S” and “T” (collectively, the “Funds”); and (2) be granted an exemption from the requirement of Rule 4.7(b)(4)<sup>1</sup> to maintain certain books and records at its main business office in accordance with Rule 1.31.<sup>2</sup>

Based upon representations contained in your correspondence, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(b). Specifically, we note that (1) the Division granted similar exemptive relief to “U”, “P’s” predecessor, in connection with “U’s” operation of the “S” and “R” funds;<sup>3</sup> (2) the “Q” and “T” funds are structured and operated similarly to the “S” and “R” funds; (3) since each Fund is operated as a “fund of funds” in that it invests its assets in offshore vehicles, “P” is unable to obtain the audited financial information from the offshore investee vehicles in sufficient time to meet the 90-day time period after the close of each of the Funds’ fiscal year for filing each of the Funds’ audited financial statements. Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants “P” an exemption from Rule 4.7(b)(3) and (b)(4) such that “P”: (1) has 155 days after the close of each Funds’ fiscal year for filing each Fund’s audited annual report and; and (2) is exempt from the requirement to maintain certain books and records at its main business office in accordance with Rule 1.31 and may maintain those documents at each Fund’s trustee, administrator or custodian, as detailed in your letter.

This relief, however, is subject to the conditions that: (1) current and prospective investors in the Funds are informed of the fact that receipt of the Funds’ annual reports will not occur within the 90-day time period specified in Rule 4.7(b)(3), but instead will occur within 155 days; (2) investors in the Funds receive quarterly reports in accordance with Rule 4.7(b) within 30 days following the end of each

calendar quarter; (3) “P” notify the Division if the location of any original books and records changes from that as represented to us; (4) “P” remains responsible for ensuring that all books and records required by Rule 4.7(b)(4) are maintained in accordance with Rule 1.31 and for assuring their availability to the Commission, National Futures Association, and any other agency authorized to inspect such books and records, in accordance with the Act and the Commission’s regulations issued thereunder;<sup>4</sup> (5) within forty-eight hours after a request by a representative of the foregoing, “P” will obtain the original books and records from the applicable trustee, administrator or custodian and provide them for inspection at “P’s” main business office, if the representative chooses to inspect them there; and (6) “P” discloses in the Disclosure Document of the applicable Fund the location of those books and records that are kept at offices other than those of “P”.

This letter does not excuse “P” from compliance with any other applicable requirements contained in the Commodity Exchange Act<sup>5</sup> (“Act”) 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 exemption granted herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activities of “P” or the Funds, including the location of a Fund’s books and records, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Barbara Stern Gold, Assistant Chief Counsel, at (202) 418-5450.

Very  
truly  
yours,

John C. Lawton  
Acting Director

1 “P” has filed a claim for exemption under Rule 4.7 with respect to each of the Funds. The Commission has recently revised Rule 4.7. *See* 65 Fed. Reg. 47848 (August 4, 2000). All other references to Commission rules cited to herein are found at 17 C.F.R. Ch.1 (2000).

2 Specifically, “P” seeks an exemption from the location requirement with respect to books and records other than the periodic and annual reports required by Rules 4.7(b)(2) and (b)(3), respectively.

3 *See* letter dated January 11, 1999 from I. Michael Greenberger to “A”, “V” and letter dated March 15, 1999 from “B” to Lawrence Eckert.

*See, e.g.,* 7 U.S.C. § 6n(3)(A) (1994) and Rules 1.31, 4.23 and 4.33.

5 7 U.S.C. § 1 *et seq.* (1994).