

CFTC Letter No. 01-03**January 16, 2001****Exemption****Division of Trading & Markets**

Re: Request for Exemption from Rules 4.7(b)(2) and 4.7(B)(3)

Dear :

This is in response to your letter dated December 7, 2000, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with the Commission staff, in which you request that "X", a registered commodity pool operator ("CPO") and the CPO of the "Master Fund", be granted an exemption from the periodic and annual reporting requirements of Rule 4.22, as modified by Rules 4.7(b)(2) and 4.7(b)(3).¹

Based upon your representations, we understand the facts to be as follows. "X" operates the Master Fund, which has as its sole participants two feeder funds, "Feeder Fund I" and "Feeder Fund II". "X" serves as the CPO of Feeder Fund I and the registered CPO of Feeder Fund II is "Y". "A", "B", and "C" are the Managing Members of both "X" and "Y". "X" and "Y" have previously claimed relief under Rule 4.7 with respect to the Master Fund and each of the Feeder Funds.²

Rules 4.7(b)(2) and 4.7(b)(3) require that a CPO of a pool operated under Rule 4.7 comply with certain periodic and annual reporting requirements, as set forth in the Rule. Therefore, absent the requested exemption, "X" as the CPO of the Master Fund would: (i) be required to provide periodic reports and an annual report to itself as the CPO of Feeder Fund I; and (ii) with respect to Feeder Fund II, would effectively also be required to provide periodic reports and an annual report to itself since the same three individuals are the Managing Members of both "X" and "Y", the CPO of Feeder Fund II.

Based upon the representations contained in your letter, the Division believes that granting the requested exemption would not be contrary to the public interest and the purposes of Rules 4.7(b)(2), 4.7(b)(3), and 4.22.³ Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts "X" from the periodic and annual reporting requirements of Rules 4.7(b)(2), 4.7(b)(3), and 4.22, in connection with its operation of the Master Fund. This relief is subject to the conditions that: (i) "X" remains the CPO of the Master Fund and Feeder Fund I, "Y" remains the CPO of Feeder Fund II, and "A", "B", and "C" remain the Managing Members of "X" and "Y"; (ii) "X" limits participation in the Master Fund to Feeder Fund I and Feeder Fund II; and (iii) the annual reports of Feeder Fund I and Feeder Fund II contain financial statements that include, among other information, the fees associated

with the operation of the Master Fund.⁴

The exemption granted by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁵ or the Commission's regulations issued thereunder. For example, it remains subject to all antifraud provisions of the Act and the Commission's regulations issued thereunder, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and to all other applicable provisions of Part 4. Moreover, this letter is applicable to "X" solely in connection with its operation of the Master Fund.

This letter, and the exemption granted herein, is based upon the representations that have been made to us. Any different, changed, or omitted facts or conditions might render the exemption void. You must notify us immediately in the event the operations or activities of "X", "Y", the Master Fund, Feeder Fund I, or Feeder Fund II change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

John C. Lawton
Acting Director

1 The Commission recently revised Rule 4.7. *See* 65 Fed. Reg. 47848 (August 4, 2000). All other references to Commission rules cited herein are found at 17 C.F.R. Ch. 1 (2000).

2 "X" filed a Notice of Claim of Exemption pursuant to Rule 4.7 with respect to the Master Fund and Feeder Fund I, effective _____. "Y" filed a Notice of Claim of Exemption pursuant to Rule 4.7 with respect to Feeder Fund II, effective _____. Accordingly, interests in each fund may only be sold to qualified eligible persons.

3 *See*, CFTC Interpretative Letter No. 00-85, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,223 (August 9, 2000); CFTC Interpretative Letter No. 98-50, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,386 (June 22, 1998) (granting exemption from certain periodic and annual reporting requirements to a CPO of a master fund who was also the CPO of one of two feeder funds, the sole participants in the master fund, and the managing members of the CPO of the other feeder fund were the same as those of the CPO of the master fund); CFTC Interpretative Letter No. 97-62, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,122 (July 15, 1997).

4 *See*, letter from Henry J. Matecki, CFTC Acting Chief Accountant, to all registered CPOs (Jan. 19,

2000) (<http://www.cftc.gov/tm/tmcpoannualreport1999.htm>). (Stating that "[a]t a minimum, the pool's financial statements should disclose, for each major investee fund: (1) the name of the fund; (2) the carrying value of the instrument; (3) liquidity information (such as limitations on withdrawals from the investee fund); and (4) summary income statement information, which should identify fees paid by the investee pool to its CPO and CTAs *expressed in dollars.*").

5 7 U.S.C. § 1 *et seq.* (1994).