

CFTC Letter No. 97-08**January 28, 1997****Division of Trading & Markets**

Re: Rule 4.7 -- Request to Be Treated as a Qualified Eligible Participant and for Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools

Dear :

This is in response to your letter dated December 5, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your letter, you request that: (1) "U", a Delaware limited partnership (the "Partnership") be treated as an "exempt pool" as that term is defined in Rule 4.7¹; (2) the Partnership be granted relief from the ten percent investment limitation found in Rule 4.7 (a)(1)(ii)(B)(2)(xi) ("ten percent limitation"); and (3) exempt pools in which the Partnership invests be allowed to treat the Partnership as a qualified eligible participant ("QEP").

Based upon the representations contained in your letter, as supplemented, we understand the pertinent facts to be as follows. "A" is a registered commodity pool operator ("CPO") and the managing general partner of the Partnership. The Partnership invests in limited partnership interests in transactions exempt from registration under the Securities Act of 1933, as amended (the "1933 Act"). All participants in the Partnership are accredited investors, as defined in Rule 501 of Regulation D under the 1933 Act.

By letter dated November 1, 1996, the Division granted relief to "A" from Rule 4.7 in connection with his operation of the Partnership to the extent that: (1) "A" may file a Rule 4.7 notice of claim for exemption with respect to the Class B Units (held exclusively by partners qualifying as QEPs) notwithstanding the presence in the Partnership of Class A Unit holders who were not QEPs; and (2) the Partnership may invest in exempt pools without regard to the ten percent limitation. Consequently, the Partnership has created the Class B Units and has invested in commodity interests through the purchase of interests in an investment partnership that will only accept QEP investors.

"A" has determined that all of the Partnership's partners are either QEPs or possess qualifications that he believes would justify their treatment as QEPs for purposes of their investment in the Partnership. As a result, "A" would like to treat all of the Partnership's partners as QEPs and operate with a single class of partnership units. The non-QEP limited partners of the Partnership

(the "Non-QEP Limited Partners") are as follows:

1. "V". "V" is a family limited partnership which owns securities of issuers with which it is not affiliated and/or other investments having an aggregate market value of at least \$2,000,000 but does not presently have total assets in excess of \$5,000,000. The two individual general partners, who make all trading decisions on behalf of "V", are QEPs. The general partners receive no compensation for their activities on behalf of "V". The limited partners of "V" are all minor children of the general partners. "V" has been a limited partner of "U" for almost six years and one of the general partners is a long-time personal friend of "A".
2. "W". "W" is a family limited partnership which owns securities of issuers with which it is not affiliated and/or other investments having an aggregate market value of at least \$2,000,000, but does not presently have total assets in excess of \$5,000,000. The individual general partner, who makes all trading decisions on behalf of "W", is a QEP. The general partner receives no compensation for his activities on behalf of "W". The limited partners of "W" are all family members of the general partner and are either QEPs or minor children of QEPs. "W" has been a limited partner of the Partnership for more than four years.
3. "X". "X" is a family limited partnership which owns securities of issuers with which it is not affiliated and/or other investments having an aggregate market value of at least \$2,000,000, but does not presently have total assets in excess of \$5,000,000. The individual general partner, who makes all trading decisions on behalf of "X", is a QEP. The general partner receives no compensation for his activities on behalf of "X". Five of the six limited partners of "X" are family members of the general partner, each of which is a QEP. The sixth partner is a trust, the trustee of which is a QEP, for the benefit of the five individual limited partners. "X" has been a partner of "U" since January of 1994.
4. "Y". "Y" is a family limited partnership whose sole investors are, and will be, members of the general partner's family. The two individual general partners, who make all trading decisions on behalf of the partnership, are QEPs. The limited partners of the partnership are all minor children of the general partners. This partnership has been a limited partner in "U" for more than four years.
5. "Z". "Z" is an investment partnership which owns securities of issuers with which it is not affiliated and/or other investments having an aggregate market value of at least \$2,000,000, and has total assets in excess of \$5,000,000. "Z" has 45 beneficial owners all of whom are accredited investors and 30 of whom are QEPs. Of the fifteen non-QEP accredited investors in the partnership, four are family members of "B", the managing general partner of the partnership, and fourteen have been invested in the pool for over three years.² "B" makes all investment decisions on behalf of the partnership and is a QEP. "Z" has been a partner in the Partnership since 1992.
6. "C". "C" is an accredited investor with an individual net worth of approximately \$1.2 million. "C" is an attorney who practiced corporate law with a large Tennessee law firm for seven years,

which practice included the area of limited partnership law. "C" has managed his personal investments for over 20 years. "C" has been a partner in "U" for almost five years and has been a life-long personal friend of "A".

We note that all Non-QEP Limited Partners have been limited partners of the Partnership at least since January of 1994, with five of the six having been limited partners since 1992, and that all are accredited investors or members of the general partners' families (with the exception of a trust created for the benefit of a general partner's family). Further, all of the general partners who make the trading decisions for the partnerships are QEPS.

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest or the purposes of Rule 4.7. Accordingly, subject to the condition that each Non-QEP Limited Partner consents to being treated as a QEP, the Division will not recommend that the Commission take any enforcement action against "A" in connection with his operation of the Partnership based solely upon: (1) his operation of the Partnership as an exempt pool pursuant to a claim of exemption to be filed under Rule 4.7 notwithstanding the presence in the Partnership of the Non-QEP Limited Partners; or (2) his investment of more than ten percent of the Partnership's assets in Rule 4.7 exempt pools. In addition, the Division will not recommend that the Commission take any enforcement action against the CPO of any Rule 4.7 exempt pool in which the Partnership is or becomes a participant based solely upon: (1) the exempt pool treating the Partnership as a QEP; or (2) the Partnership's investment of more than ten percent of the Partnership's assets in Rule 4.7 exempt pools.

This letter is based upon the representations made to us and is only applicable to "A" with respect to the Partnership and the CPO of any Rule 4.7 exempt pool in which the Partnership invests. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities or composition of the Partnership, "A", or the Non-QEP Limited Partners differ in any respect from those as represented to us. This letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at (202) 418-5447.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996).

² The following individuals are the eleven non-QEP investors who are not members of “B’s” family: five physicians, each with extensive investment experience, and each having been a client, long-term business associate, or personal friend of “B” for over ten years; a manufacturing representative who is an active investor and has been a client of “B” for over twenty years; a real estate developer with an investment portfolio exceeding one million dollars who has been “B’s” client for over four years; an executive of a real estate investment company whose responsibilities include management of a billion-dollar investment portfolio, who is also an attorney and close friend of “B” for the past thirty-five years; a veterinarian who is an active investor and has been “B’s” client and personal friend for fifteen years; an independent investor managing a personal portfolio of nearly two million dollars who has been a close friend of “B” for over twenty years; and the owner of an insurance agency holding various professional degrees who has been a client and friend of “B” for over ten years.