

CFTC Letter No. 97-24**April 1, 1997****Division of Trading & Markets**

Re: Rule 4.7(a)(1)(ii)(B)(2)(xi) -- Request to Treat Trust as a QEP and Request for Relief from the Ten Percent Restriction

Dear :

This is in response to your letter dated February 10, 1997, 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 correspondence, you request on behalf of X , a registered commodity pool operator (CPO) and managing general partner (the General Partner) of (the Pool), confirmation that the General Partner: (1) may continue to claim relief pursuant to Rule 4.7(a)¹ in connection with serving as the CPO of the Pool in the event that it admits as an investor in the Pool a trust which is not a qualified eligible participant (QEP²) as that term is defined in Rule 4.7(a)(1)(ii)(B)(2)(xi); and (2) may claim relief from the restriction in Rule 4.7(a)(1)(ii)(B)(2)(xi) which would otherwise prevent the General Partner, as the CPO of a Pool with a non-QEP participant, from investing more than ten percent of the Pool s assets in other pools for which the CPOs thereof have claimed relief pursuant to Rule 4.7(a) (the Rule 4.7(a) Exempt Pools).

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The General Partner wishes to permit (the Trust), which is not a QEP because it has less than \$5,000,000 in assets, to invest in the Pool. In support of your request, you represent that: (1) the sole beneficiary of the Trust, A , is the grandniece of B , the beneficial owner of the General Partner; (2) the sole trustee of the Trust, C , is B s nephew; and (3) C is a QEP and a registered CPO and he has over twelve years of investment experience.

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(a). Accordingly, subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against: (1) the General Partner solely on the basis that the General Partner continues to claim relief from Rule 4.7(a) in connection with its operation of the Pool, notwithstanding the admission of the Trust as an investor in the Pool and treatment of the Trust as a QEP; and (2) the General Partner or the CPO of any Rule 4.7(a) Exempt Pool in which the Pool is or becomes a participant based solely upon the Pool s investment of more than ten percent of its assets in such pool. This relief is subject to the condition that the trustee of the Trust consents to the Trust being treated as a QEP.

This letter is based upon the representations made in your correspondence. Any different, changed, or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations or activities of the Pool, including the composition of its investors, change in any way from those represented to us.

The relief granted by this letter relieves the General Partner solely from certain requirements of Rule 4.7 in connection with its operation of the Pool and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act (the Act) or in the Commission's regulations issued thereunder. For example, the General Partner remains subject to the antifraud provisions of Section 40 of the Act,³ to 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.

This letter represents the positions of this Division only and does not necessarily represent the positions of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief
Counsel

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

² The General Partner filed a Notice of Claim for Exemption Pursuant to Rule 4.7(a) for the Pool which became effective on October 30, 1995. Pursuant to this exemption, interests in the Pool may only be sold to QEPs. Subsequently, by letter dated November 21, 1995, the Division granted the General Partner relief from Rule 4.7(a), permitting the General Partner to treat certain non-QEPs, *i.e.*, a natural person and three trusts, as QEPs. The natural person was D, an officer of the General Partner, and the three trusts were all ones in which the beneficiary was either a grandniece or grandnephew of B, the principal beneficial owner and Managing Member of the General Partner. The three trusts were E, F, and G.

³ 7 U.S.C. § 60 (1994).