

**CFTC Letter No. 97-67****August 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

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Dear :

This is in response to your letter dated July 7, 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 A , B , C and D , each of whom is registered with the Commission as a commodity pool operator ( CPO ) and is a general partner (collectively, the General Partners ) of the "Fund", confirmation that the General Partners may continue to claim relief pursuant to Rule 4.7(a)<sup>1</sup> in the event that they admit as a participant in the Fund a trust which is not a qualified eligible participant ( QEP<sup>2</sup>) as that term is defined in Rule 4.7(a)(1)(ii)(B)(2)(xi). In addition, you request that the General Partners may claim relief from the restriction in Rule 4.7(a)(1)(ii)(B)(2)(xi) which would otherwise prevent them, as the CPOs of a Rule 4.7(a) pool in which not all participants are QEPs, from investing more than ten percent of the fair market value of the Fund'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 Partners wish to permit the Trust , which is not a QEP because it has less than \$5,000,000 in assets, to invest more than ten percent of the fair market value of its assets in the Pool. In support of your request, you represent that: (1) the Trust was created in 1997 for a term of fifteen years by the will of E , who was a QEP; (2) the sole trustee of the Trust is F , who is E's widow and a QEP; (3) F is responsible for making the investment decisions for the Trust; (4) the E and F Foundation, which is the sole income recipient for fifteen years, is a QEP; and (5) upon the Trust's termination, the remaining principal of the Trust is payable in equal shares to E's grandchildren.

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 enforcement action against: (1) the General Partners solely on the basis that they continue to claim relief from Rule 4.7(a) in connection with their operation of the Fund, notwithstanding the admission of the Trust as a participant in the Fund and treatment of the Trust as a QEP; and (2) the General Partners or the CPO of any Rule 4.7 (a) Exempt Pool in which the Fund is or becomes a participant based solely upon the Fund's

investment of more than ten percent of the fair market value of its assets in such Exempt 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 and is subject to compliance with the condition set forth above. 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 Fund, including the composition of its investors, change in any way from those represented to us.

The relief granted by this letter relieves the General Partners solely from certain requirements of Rule 4.7(a) in connection with their operation of the Fund and does not excuse them from compliance with any other applicable requirements contained in the Commodity Exchange Act (the Act<sup>3</sup>) or in the Commission's regulations issued thereunder. For example, the General Partners remain subject to the antifraud provisions of Section 40 of the Act,<sup>4</sup> 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 position of this Division only and does not necessarily represent the views 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

Acting  
Director

<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

<sup>2</sup> The General Partners filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) for the Fund, which became effective on February 7, 1994. Pursuant to this exemption, interests in the Fund may only be sold to QEPs. Subsequently, by letter dated December 28, 1993, the Division granted the General Partners relief from Rule 4.7(a) in connection with their operation of the Fund and X, also a Rule 4.7(a) exempt pool, permitting them to treat certain persons as QEPs for the purpose of investing in these pools.

<sup>3</sup> 7 U.S.C. § 1 *et seq.* (1994).

<sup>4</sup> 7 U.S.C. § 60 (1994).