

CFTC Letter No. 97-72**August 28, 1997****Division of Trading & Markets**

Re: Request to Treat Investor as a Qualified Eligible Participant under Rule 4.7(a)

Dear :

This is in response to your letter dated August 4, 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 the CPO of the "Pool", relief from Rule 4.7(a)¹ such that X may continue to claim relief pursuant to Rule 4.7(a) in the event that it admits into the Pool a joint account that is not a qualified eligible participant (QEP²) as defined in the rule.

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. X wishes to admit as a participant in the Pool a joint account owned by A and B (the "Joint Account") which is not a QEP. In support of your request you represent, among other things, that: (1) A is a QEP under Rule 4.7(a) by virtue of being the sole proprietor of Y , a registered commodity trading advisor ("CTA"); (2) Y will serve as the Pool's CTA; (3) B , A's wife, is an accredited investor as defined in Regulation D under the Securities Act of 1933; (4) B is an attorney who has practiced corporate and real estate law for six years and has also worked for a tax firm; and (5) B assisted A in establishing Y .

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest or the purpose 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 X solely on the basis that it continues to claim relief from Rule 4.7(a) in connection with its operation of the Pool, notwithstanding the admission of the Joint Account as a participant in the Pool and treatment of the joint account as a QEP. This relief is subject to the condition that A and B consent to the Joint Account being treated as a QEP.

This letter is based upon the representations made to us 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 Pool, including the composition of its investors, change in any way from those represented to us.

The relief granted by this letter relieves X solely from certain requirements of Rule 4.7(a) 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 Act³) or in the Commission's regulations issued thereunder. For example, X remains subject to the antifraud provisions of Section 40 of the Act,⁴ 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

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

² X filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) for the Pool effective August 7, 1997. Pursuant to this exemption, interests in the Pool may only be sold to QEPs.

³ 7 U.S.C. § 1 *et seq.* (1994).

⁴ 7 U.S.C. § 6o (1994).