

CFTC Letter No. 97-75**September 25, 1997****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Relief from QEP Criteria for a Trust Established by the Principal of a CPO.

Dear :

This is in response to your letter dated August 11, 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 this correspondence, you request on behalf of X , a registered commodity pool operator (CPO), that the Division permit X , in connection with its operation of the Pool , to treat a trust (the "Trust") established for the benefit of two children of the Chairman of X as a qualified eligible participant (QEP) as that term is defined in Rule 4.7(a)¹.

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The Pool is a Delaware limited partnership of which X serves as the sole general partner and CPO. Pursuant to a Notice of Claim for Exemption filed pursuant to Rule 4.7(a) with respect to the Pool, interests in the Pool may be sold only to QEPs.² X now wishes to admit a non-QEP trust into the Pool. The Trust was established by A , the Chairman of X and a QEP, for estate planning and investment purposes. The sole beneficiaries of the trust are the two teenage sons of A . X is the investment adviser to the Trust and is responsible for making all investment decisions on behalf of the Trust. The Trust does not qualify as a QEP since it does not have total assets in excess of \$5 million.³ Thus, absent relief, the Pool would be prohibited from accepting the Trust as a participant. In support of your request, you state that the Trust consents to being treated as a QEP and, further, that the Trust will have access to all information pertinent to an investment in the Pool.

Based upon the foregoing representations, it appears that granting the requested relief would not be contrary to the public interest or the purposes of Rule 4.7(a). Accordingly, the Division will not recommend that the Commission take any enforcement action against X for failure to comply with Rule 4.7(a) solely on the basis that it claims relief pursuant to Rule 4.7(a) with respect to the Pool, notwithstanding investment in the Pool by the Trust and its treatment as a QEP.

This letter does not excuse X from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (Act⁴) or the Commission's regulations issued thereunder. For example, X remains subject to the anti-fraud provisions of Section 4o of the Act,⁵ the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and to all otherwise applicable provisions of Part 4. Moreover, this relief is applicable to X solely in connection with its operation of the Pool.

The relief granted in this letter is based upon the representations you have made to us. 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 X or the Pool, including the composition of the Pool s investors, change in any way from those as represented to us.

This letter represents the position of this Division only. It 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 Charles O'Brien of 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 (1997).

² X filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Pool on February 10, 1997.

³ See Rule 4.7(a)(1)(ii)(B)(2)(xi). The Trust has assets of approximately \$1.8 million.

⁴ 7 U.S.C. § 1 *et seq.* (1994).

⁵ 7 U.S.C. § 6o (1994).