

CFTC Letter No. 97-76**September 24, 1997****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Relief from QEP Criteria for Certain Employees of CPO

Dear :

This is in response to your letter dated August 15, 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 U , a registered commodity pool operator (CPO), that the Division permit U , in connection with its operation of the Pool , to treat certain employees (the "Employees") of U as qualified eligible participants (QEPs) 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 liability company of which U serves as the managing member 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 U now wishes to admit the Employees into the Pool. The Employees are: A , B and C , all of whom are employees of U and non-QEPs.³ A is a Managing Director of U and has been employed by U since 1991. A oversees U s marketing and product development for institutional clients and various hedge funds for which U serves as general partner and/or investment adviser. A holds a Series 3 license, has been registered as an associated person of U since May 1, 1997 and has a combined net worth with his spouse of over \$600,000. For three years prior to joining U , A was employed as an analyst for V specializing in financial institutions and mortgage finance.

B is a Managing Director of U and has been employed by U since 1990. B has been employed by U as a senior portfolio manager and is responsible for managing bond and trading portfolios which include commodity futures and options. B is one of five managing directors responsible for overseeing the operations of U's portfolio management group. B holds a masters degree in business administration and has a combined net worth with his spouse of over \$3,500,000.⁴ For five years prior to joining U , B was employed as an analyst for X specializing in fixed income research.

C is an officer of U and has been employed by U since January, 1996. C has been employed by U as part of the risk management group and specializes in the trading and analysis of derivative instruments. C has a Ph.D. in physics and has a net worth of over \$200,000. C has been employed in the securities industry for more than eleven years. From 1993 until joining U, C worked as a vice president and analyst for W, specializing in the design and marketing of structured notes and other derivative products for institutional clients. Prior to that, C worked for Y as an associate responsible for designing derivative products from 1992 to 1993 and for X as an analyst dealing in derivatives from 1991 to 1992. From 1986 to 1991 he worked as an independent trader dealing in equity securities for his own account.

In support of your request, you state that the Employees will consent in writing to being treated as QEPs and that they 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 U 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 Employees and their treatment as QEPs.

This letter does not excuse U from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (Act⁵) or the Commission's regulations issued thereunder. For example, U remains subject to the anti-fraud provisions of Section 4o of the Act⁶, 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 U 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 U 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 U filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Pool on July 18, 1997.

³ By your correspondence, you also requested treatment of D as a QEP for the purpose of investing in the Pool. Following conversations with staff, you were advised that it appears that D is a QEP pursuant to Rule 4.7(a)(1)(ii)(B)(1)(i) and 4.7(a)(1)(ii)(B)(2)(ix) based on your representations that he jointly owns with his spouse securities with an aggregate market value of at least \$2 million and has a joint net worth with his spouse that exceeds \$1 million at the time of his purchase of shares in the exempt pool. Accordingly, you withdrew your request for relief with respect to D .

⁴ However, of that amount only \$500,000 is invested in securities.

⁵ 7 U.S.C. § 1 *et seq.* (1994).

⁶ 7 U.S.C. § 6o (1994).