

CFTC Letter No. 97-92**November 21, 1997****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Relief from Qualified Eligible Participant Criteria

Rule 4.7(a)(1)(ii)(B)(2)(xi) -- Request for Relief from Ten Percent Restriction

Dear :

This is in response to your letter dated October 28, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile dated November 13, 1997 and telephone conversations with Division staff. By this correspondence, you request on behalf of R , a registered commodity pool operator ("CPO"), that the Division permit R , in connection with its operation of two Delaware business trusts (the "Funds")¹, to treat a prospective investor as a qualified eligible participant ("QEP"), as that term is defined in Rule 4.7(a).² In addition, you request relief on behalf of R from the restriction in Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Restriction") which would prevent the Funds, as pools with a non-QEP participant, from investing more than ten percent of their assets in other pools for which the CPOs thereof have claimed exemption pursuant to Rule 4.7(a) ("Rule 4.7 Exempt Pools").

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. Pursuant to a Notice of Claim for Exemption filed under Rule 4.7(a) with respect to the Funds, interests in the Funds may be sold only to QEPs.³ However, R would like to admit A , a non-QEP, into the Funds. A is employed as the Chief Operating Officer of R and has served in this capacity since October 1995. In addition, since October 1995 A has also been employed as a Senior Vice President of U , the parent company of R . Prior to joining R , A was employed by the following investment advisory firms: as a Senior Vice President of V from March 1994 through October 1995; as the Chief Financial Officer of W from July 1987 until March 1994; and as the controller of X from June 1981 until July 1987. A , who is an accredited investor, will serve as the Tax Matters Partner of the Funds.⁴ A consents to his treatment as a QEP.

Based upon your 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 commence any enforcement action against R solely on the basis that: (1) R continues to claim relief pursuant to Rule 4.7(a), notwithstanding investment in the Funds by A and his treatment as a QEP; and (2) the Funds invest more than ten percent of the fair market value of their assets in Rule 4.7 Exempt Pools.

This letter relieves R solely from compliance with certain requirements of Rule 4.7(a) in connection with A's investment in the Funds and does not excuse R from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁵ or the Commission's regulations issued thereunder. For example, R remains subject to the antifraud provisions of Section 40 of the Act,⁶ the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and all other applicable requirements of Part 4. Moreover, this relief is applicable to R solely in connection with its operation of the Funds.

The relief issued by 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 R or the Funds, including the composition of the Funds' investors, change in any way from those as represented to us.

This letter represents the position of the 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, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Specifically, the Funds are S and T .

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

³ R filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to each of the Funds on November 14, 1997.

⁴ By your correspondence you explain that A must purchase at least one unit in each Fund so that he can serve as the TMP under Section 6231(a)(7) of the Internal Revenue Code. As the TMP, A s principal

responsibility is to represent the Funds in administrative proceedings before the Internal Revenue Service.

⁵ 7 U.S.C. § 1 *et seq.* (1994).

⁶ 7 U.S.C. § 6*o.*