

CFTC Letter No. 97-99**December 29, 1997****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Relief so that a CPO May Treat Employees of an Affiliated Company as Qualified Eligible Participants

Dear :

This is in response to your letter dated October 10, 1997, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by telephone conversations between A , your associate, and 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 the Partnership and the "Institutional Partnership" (collectively, the "Funds"), to treat several employees of S 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 Partnership and the Institutional Partnership were established in October 1991 and July 1992, respectively. R serves as the CPO and sole general partner of each Fund. Pursuant to Notices of Claim for Exemption under Rule 4.7(a) filed on behalf of the Funds, interests in the Funds may be sold only to QEPs.²

By letter dated October 26, 1995, the Division granted R relief from Rule 4.7(a) such that it could accept as participants in the Funds certain persons who did not meet the QEP definition. R now wishes to admit certain additional persons (the "Non-QEPs") into the Funds. The Non-QEPs are employees of S , a company wholly-owned by the principals of R , which was established for the sole purpose of providing research to R . Specifically, the Non-QEPs are as follows:

- (1) B , who is employed by S as a securities analyst. He has worked in the securities industry for over six years. Prior to joining S , B was employed as a financial analyst for T from July 1991 to July 1993. From August 1993 to August 1995 he was employed as a securities analyst at the broker-dealer firm of U , focusing on merger arbitrage. From September 1995 until joining S in October 1997, he was employed as a securities analyst with the investment advisory firm of V .

(2) C , who is employed by S as a securities analyst. He has worked in the securities industry for the past 14 years. From July 1983 through October 1987, he was employed by W as both a financial consultant and an investment analyst. From October 1987 until joining S in October 1995, he was employed by X , the investment subsidiary of Y , as an investment manager specializing in non-traditional investments.

(3) D , who is employed by S as a trader dealing in equities and equity options. He has worked in the securities industry for the past twelve years. Prior to joining S in May 1994, he was employed as an arbitrage trader by the investment firm of Z from July 1985 until February 1989. Between February 1989 and December 1992, he directed the operations of a hardware and tool supply company that he founded. From January 1993 to May 1994, he directed the operations of a computer software and financial services consulting firm that he founded.

In further support of your request, you state that the Non-QEPs will consent to being treated as QEPs and that they will have access to all information pertinent to an investment in the Funds.

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 commence any enforcement action against R solely for failure to comply with Rule 4.7(a) if it claims relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding investment in the Funds by the above-referenced Non-QEPs and their treatment as QEPs.³

In addition, you request relief so that R may treat E , also an employee of S , as a QEP. E is employed by S as a junior trader dealing in equities and equity options and has been employed by S since August 1996. He is a 1996 university graduate with a bachelors degree in Finance. In light of E s brief experience working in the securities industry and his relative lack of financial resources compared to the QEP standards, the Division is declining at this time to provide R with the requested relief such that they may treat E as a QEP.

This letter does not excuse R from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act ("Act")⁴ or the Commission's regulations issued thereunder. For example, R remains subject to the antifraud 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 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, you should notify us immediately in the event 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 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, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

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

² R filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) on behalf of the Partnership on July 31, 1996 and on behalf of the Institutional Partnership on August 22, 1996.

³ You also seek relief from the QEP requirement of Rule 4.7(a) with respect to "other employees of either R or its affiliates" who have "backgrounds similar" to those set forth in your letter, such that R need not seek specific relief from Rule 4.7(a) from the Division prior to admitting any such employee as a limited partner in a Fund. The Division is declining at this time to provide such broad relief.

⁴ 7 U.S.C. § 1 *et seq.* (1994).

⁵ 7 U.S.C. § 6o (1994).