

**CFTC Letter No. 99-29****July 16, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) --Request for Exemptive Relief to Treat Certain Employees of a Pool's Trading Manager as QEPs and Confirmation that the Pool is a QEP under Rule 4.7(a)(1)(ii)(D)

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Dear :

This is in response to your letter dated April 27, 1998 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 an exemption from Rule 4.7(a) on behalf of "R" registered commodity pool operator ("CPO") and the CPO of the Pool", so that "R" may treat four employees of the Pool's trading manager, ("Trading Manager"), a registered commodity trading advisor ("CTA"), as though they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>1</sup> In addition, you request confirmation of your view that the CPO of any other Rule 4.7(a) exempt pool in which the Pool invests may treat the Pool as if it satisfies the QEP criteria of Rule 4.7(a)(1)(ii)(D).

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool is operated pursuant to the criteria of Rule 4.7(a).<sup>2</sup> The Trading Manager selects trading advisors for the Pool, establishes risk guidelines for the Pool and monitors adherence to those guidelines, and tracks the Pool's overall investment performance. "R" now wishes to admit as participants in the Pool the following non-QEP employees (the "Non-QEPs") of the Trading Manager, each of whom you represent to have at least five years experience in the investment industry and to be registered as an associated person ("AP") of the Trading Manager:

"A", who is a Director, Executive Vice President, and Chief Executive for Alternative Investments of the Trading Manager and is a Managing Director of "S". "A" has worked at "S" for twelve years and has managed multi-advisor funds since 1991. As Chief Executive for Alternative Investments for the Trading Manager, he is responsible for the Trading Manager's activities with respect to the Pool as well as other multi-advisor portfolios with assets under management exceeding \$300 million. "A" is an accredited

investor as that term is defined in Regulation D under the Securities Act of 1933.

"B", who is the Managing Director in charge of Asia Pacific within "S" and a Vice President of the Trading Manager. "B" is responsible for structuring alternative investment products in the Asia Pacific region for Asian institutional clients of "S" and its affiliates, including the Trading Manager. "A" has been with "S" for over fourteen years and has over seventeen years of banking and investment experience. "A" is also an accredited investor.

"C", who is a Vice President for the Trading Manager. "C" is actively involved in selecting and monitoring trading advisors for the Trading Manager's multi-manager hedge funds and mutual funds. "C" also performs these functions for the Pool. "C" joined the Trading Manager in 1994. She is a qualified Chartered Accountant, Certified Public Accountant and a Certified Financial Analyst. While "C" is not an accredited investor, she earned in excess of \$200,000 last year and expects to earn in excess of \$200,000 this year.<sup>3</sup>

"D", who also is a Vice President for the Trading Manager. "D" is the hedge fund trading advisor analyst, and he also assists in portfolio management. "D" also performs these functions for the Pool. Prior to joining the Trading Manager in 1996, "D" was a senior account officer in "T" for nearly two and one half years. Last year he earned in excess of \$200,000, and he expects to earn in excess of \$200,000 this year.

In support of your request, you represent that "R" has obtained the written consent of each Non-QEP to be treated as a QEP and, further, that each Non-QEP is fully familiar with the risks associated with the Pool and has access to all information relevant to investing in the Pool.

In addition, "R" wishes to invest more than ten percent of the assets of the Pool in other Rule 4.7(a) exempt pools. You request that if the Division permits "R" to treat the Non-QEPs as if they satisfy the QEP criteria for purposes of investing in the Pool, then, because all investors in the Pool will be either QEPs or Non-QEPs being treated as QEPs, the Division should also permit the CPO of any other Rule 4.7(a) exempt pool to treat the Pool itself as a QEP under Rule 4.7(a)(1)(ii)(D).<sup>4</sup>

The purpose of Rule 4.7 is to "reduc[e] unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the . . . rule, do not appear to need the full protections offered by the Part 4 framework."<sup>5</sup>

Based upon the foregoing representations, it appears that granting the requested relief would not be contrary to the public interest and the purposes of Rule 4.7(a). Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby grants "R" an

exemption such that it may treat the Non-QEPs as QEPs and continue to claim relief pursuant to Rule 4.7(a) notwithstanding the Non-QEPs' investment in the Pool. Further, based upon this determination and the reasoning set forth above, the CPO of any other Rule 4.7(a) exempt pool may treat the Pool as a QEP under Rule 4.7(a)(1)(ii)(D).

The relief granted by this letter does not excuse "R" from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act")<sup>6</sup> or in the Commission's regulations issued thereunder. For example, "R" remains subject to all antifraud provisions of the Act and the Commission's regulations issued thereunder, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations and to all other provisions of Part 4. Moreover, this exemption is applicable to "R" solely in connection with its operation of the Pool.

This letter, and the exemption granted herein, are based upon the representations that have been made to us. Any different, changed, or omitted material facts or circumstances might render these exemptions void.<sup>7</sup> You must notify us immediately in the event the operations or activities of SFG or the Pool, including the composition of the investors in the Pool, change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Gregory S. Collett, an attorney in my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> While your letter sought a "no action" position under Rule 4.7(a), we are treating it as a request for exemption from the QEP criteria of Rule 4.7(a). Commission rules referred to herein are found at 17 C.F.R. Ch. I. (1999).

<sup>2</sup> "R" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Pool on February 19, 1993.

<sup>3</sup> An "accredited investor" is, among other things, "any natural person who had individual income in excess of \$200,000 in each of the two most recent years . . . and has a reasonable expectation of reaching the same income level in the current year." 17 C.F.R. § 230.501 (1999).

<sup>4</sup> Rule 4.7(a)(1)(ii)(D) defines a QEP as "an entity in which all of the unit owners or participants are persons listed in paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of [Rule 4.7]."

<sup>5</sup> 57 Fed. Reg. 3148 at 3150 (January 28, 1992). Among other things, Part 4 specifies disclosure, reporting and recordkeeping requirements for CPOs (and commodity trading advisors, too).

<sup>6</sup> 7 U.S.C. §1 *et seq.* (1994).

<sup>7</sup> Further in this regard, if either "C" or "D" does not earn in excess of \$200,000 in 1999, then the exemption to treat that person as a QEP shall become void.