

CFTC Letter No. 99-34**August 16, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) --Request for Exemptive Relief to Treat an Employee of a CPO as a QEP under Rule 4.7(a) and Confirmation of the Availability of Prior Relief

Dear :

This is in response to your letter dated March 17, 1999 to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission). By your correspondence, you request an exemption from Rule 4.7(a) on behalf of T , a registered commodity pool operator (CPO) and the CPO of The Directors Fund Limited Partnership (Pool), so that T may treat A , an employee of T , although he satisfies the qualified eligible participant (QEP) criteria of Rule 4.7(a) in connection with T s sale to A of Class B units of participation in the Fund. In addition, you request that the Division confirm that T may continue to rely on the relief from the QEP criteria of Rule 4.7 provided by prior letters issued to T and its predecessors² on August 12, 1993, May 2, 1996, August 13, 1996 and June 24, 1998 (Prior Letters).

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool currently has two outstanding classes of units: Class A and Class B. Class A units may be sold to Non-QEPs, but Class B units may be sold only to QEPs. The two classes of units have different fee structures, but all Pool participants share pro rata in Pool s profits and losses.

By letter dated August 12, 1993, the Division granted V an exemption from the Rule 4.7 requirement that, for Rule 4.7 relief to be available, all participants in a pool must be QEPs. The August 12, 1993 letter therefore allowed V to file notices of claim for exemption pursuant to Rule 4.7 in connection with the sale of only Class B, rather than all, units of participation in the Fund. Thus, Class B units now may be held by: (1) QEPs; and (2) non-QEPs for whom V has received exemptive relief from the Division such that V may treat the non-QEPs as though they were QEPs.

By letters dated May 2, 1996 and August 13, 1996, the Division granted U exemptive relief in connection with the sale of Class B units pursuant to Rule 4.7 to certain high-

level employees of U who were not QEPs. By letter dated June 24, 1998, the Division granted T similar relief in connection with another high-level employee, and, additionally, confirmed that T could rely upon the relief granted to V and U in the three previous letters.

In support of your request to treat A as a QEP, you represent that he is a Vice President of T and the director of T's Risk and Quantitative Analysis Department. As such, A reviews and analyzes all positions for all clients and commodity pools advised by T, including the Pool, and calculates risk estimates for those clients and pools. He has been an employee of T and its predecessors since 1991. You represent additionally that T has obtained A's written consent to be treated as a QEP and, further, that A is fully familiar with the risks associated with the Pool and has access to all information relevant to investing in the Pool.

In support of your request that the Division confirm that T may rely on the relief from the QEP criteria of Rule 4.7 provided to it and its predecessors in the Prior Relief Letters, you certify that: (1) all material facts and representations set forth in the Prior Relief Letters are accurate; (2) T will comply with the conditions in the Prior Relief Letters, including those applicable to its predecessors; and (3) T will inform the Division if any material fact set forth in the Prior Relief Letters changes.

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 T an exemption such that it may treat A as a QEP and continue to claim relief pursuant to Rule 4.7(a) notwithstanding A's investment in the Pool. Further, the Division confirms that T may rely on the Prior Relief Letters, subject to compliance with the conditions set forth in those letters.

The relief granted by this letter does not excuse T from compliance with any other applicable requirements contained in the Commodity Exchange Act (the Act³) or in the Commission's regulations issued thereunder. For example, T 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 T solely in connection with its operation of the Pool.

This letter, and the exemption granted herein, are based upon the representations that you have made to us. Any different, changed, or omitted material facts or circumstances might render these exemptions void. You must notify us immediately in the event the operations or activities of T 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

¹ 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).

² In the August 12, 1993 letter, the Division granted relief (discussed below) to V, a Netherlands Antilles corporation. In 1996, V was renamed U and incorporated in Bermuda. In 1997, most of the assets and business of U were sold to T, a newly-formed subsidiary of the W. Additionally, most of U key employees became employees of T in the same or similar capacities. Pursuant to the sale, T became the general partner and CPO of the Pool.

³ 7 U.S.C. §1 *et seq.* (1994).