

CFTC Letter No. 99-36**July 16, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) Request for Exemptive Relief to Treat the President of the CPO as a QEP

Dear :

This is in response to your letter dated April 13, 1999, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your e-mail dated April 28, 1999 and telephone conversations with Division staff. By your correspondence, you request on behalf of X , a registered commodity pool operator (CPO), that the Division permit X , in connection with its operation of (the Fund), to treat an employee of the CPO as if he satisfies the qualified eligible participant (QEP) criteria of Rule 4.7(a)¹.

Based upon the representations made in your correspondence, we understand the facts to be as follows. X serves as the CPO of the Fund. Pursuant to a Notice of Claim for Exemption filed under Rule 4.7(a), interests in the Fund may be sold only to QEPs.² X now seeks an exemption to permit the Non-QEP employee to participate in the Fund.

The Non-QEP employee, A , is the president and a principal of X . A has over 20 years experience in the financial services industry and is currently responsible for managing the portfolio of three private investment funds, including the Fund. As the portfolio manager, A is responsible for the general investment operations of the Fund, including investment strategy, research, and risk management. Although he does not qualify as a QEP, A is an accredited investor under Regulation D of the Securities Act of 1933. Also, A has passed the Series 3, 7 and 63 examinations. Finally, in support of your request for relief, you represent that A will provide his written consent to treatment as a QEP for purposes of his investment in the Fund.

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.³ As noted

above, A does not meet the applicable QEP criteria. However, as also noted above, A : (1) is an officer and principal of the CPO; (2) has over 20 years experience in the financial services industry; and (3) is responsible for the general investment operations of the Fund. Moreover, in light of his position with the CPO, he should have access to all information pertinent to an investment in the Fund.

Based upon the foregoing representations, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(a). Accordingly, under the authority delegated to it by Rule 140.93(a)(1), the Division hereby grants X an exemption such that it may continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding A s investment, and to treat A as a QEP.

This letter does not excuse X from compliance with any other applicable requirements contained in the Commodity Exchange Act⁴ (Act) or Commission regulations issued thereunder. For example, X remains subject to all of the antifraud provisions of the Act and the Commission s regulations, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission s regulations and all otherwise applicable provisions of Part 4. Moreover, this relief is applicable to X solely in connection with its operation of the Fund, as discussed above.

This letter, and the exemption granted herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activities of X or the Fund, including the composition of investors, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Matthew W. Lisle, 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.1 (1999).

² X filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) on behalf of the Fund on December 18, 1998.

³ 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).

⁴ 7 U.S.C. § 1 et seq. (1999).