

CFTC Letter No. 99-53**November 30, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) Request for Exemptive Relief so that the CPO
May Treat Employees and an Ex-Employee as QEPs.

Dear :

This is in response to your letter dated September 9, 1999, 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 on behalf of P , a registered commodity pool operator (CPO), that the Division permit P , in connection with its operation of Q , R , and S (collectively, the Funds), to treat four investors as if they satisfy 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. P serves as the CPO of the Funds. Pursuant to Notices of Claim for Exemption filed under Rule 4.7(a), interests in the Funds may be sold only to QEPs.² P now seeks an exemption to permit four investors, who are not QEPs, to participate in Q and R and to permit S to treat R as a QEP notwithstanding the presence of the four non-QEP investors.

Specifically, the four investors (Non-QEPs) are:

(1) A . A joined P in 1992 and became a managing director of the firm in January 1997. A oversaw development of certain of the firm s quantitative trading activities. Currently, A manages many aspects of the firm s proprietary trading activities and directs various research and development efforts.

(2) B . B joined P in 1990 and became a managing director of the firm in January 1998. Since 1996, B has been the controller or the chief financial officer of the firm and of various broker dealers associated with the firm.

(3) C . C is the President, Chairman of the Board, and a major stockholder of N , a provider of Internet-related services, of which E is Chairman of the Board of Directors and a major stockholder. C has been President of S since June 1995 and has served as a director of S since October 1997. From 1992 until 1999, C was employed by P in a number of positions, beginning as the Director of Strategic Growth. In 1995, C became a Senior Vice-President of P and, in January, 1998, C became a managing director of P , a position he held until February 1999.

(4) D . D joined P in August 1994 and became a managing director in January 1998. D has played an important role in building the firm s institutional trading business. He currently heads the firm s U.S. Equities Division. D is also responsible for directing the development of some of the firm s new broker dealer business.

Although they do not qualify as QEPs, the Non-QEPs are accredited investors as that term is defined in Rule 501(a)(6) under the Securities Act of 1933.³ Finally, in support of your request for relief, you represent that the Non-QEPs will consent to treatment as a QEP for purposes of their participation in the Funds.

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.⁴ As noted above, the Non-QEPs do not meet the applicable QEP criteria. However, as also noted above, the Non-QEPs: (1) are either current or former managing directors of P ; (2) have substantial experience in the financial services industry; and (3) are accredited investors.

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, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants P an exemption permitting it to treat the Non-QEPs as QEPs and to continue to claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding the participation of the Non-QEPs in Q and R and the participation of R in S .

This letter does not excuse P from compliance with any other applicable requirements contained in the Commodity Exchange Act⁵ (Act) and the Commission s regulations issued thereunder. For example, P 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 P solely in connection with its operation of the Funds, 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 P or the Funds, 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,

John C. Lawton

Acting Director

¹ Commission rules referred to herein are found at 17 C.F.R. Ch.1 (1999).

² P filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) on behalf of Q on _____ and on behalf of R and S on _____.

³ 17 C.F.R. § 230.501(a)(6) (1999) defines an accredited investor as a person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

⁴ 57 Fed. Reg. 3148 at 3150 (January 28, 1992). Among other things, Part 4 specifies disclosure, reporting and recordkeeping requirements for CPOs.

⁵ 7 U.S.C. § 1 *et seq.* (1994).