

CFTC Letter No. 99-54**November 30, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) Request for Exemptive Relief so that a CPO May Treat Relatives of Its Principal as QEPs.

Dear :

This is in response to your letter dated August 3, 1999, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission). By your correspondence, you request on behalf of X , an applicant for registration as a commodity pool operator (CPO) and commodity trading advisor (CTA¹) that the Division permit X , in connection with its operation of the Fund , to treat your mother and your brother as if they satisfy the qualified eligible participant (QEP) criteria of Rule 4.7(a)².

Based upon the representations made in your correspondence, we understand the facts to be as follows. X has operated the Fund pursuant to a Notice of Claim for Exemption filed under Rule 4.13.³ However, when its CPO and CTA registration is granted, X plans to file a Notice of Claim for Exemption under Rule 4.7(a) with the Commission in connection with its operation of the Fund. Since interests in a Rule 4.7 exempt pool can be sold only to QEPs, X seeks an exemption to permit your mother and your brother, who are not QEPs, to participate in the Fund.

You are listed as the sole principal and associated person (AP) of X . The Fund currently has seven partners, two of whom are not QEPs. The Non-QEPs are A , your mother, and B , your brother. You represent that your mother lives with you and that you provide her with financial advice and guidance. Your brother is involved in the administration of the Fund, which provides him with access to all information regarding the Fund. Additionally, he has experience in international finance, manages his own investment portfolio, and operates his own business. Moreover, your brother is an accredited investor as that term is defined in Rule 501(a)(5) under the Securities Act of 1933.⁴ Finally, in support of your request for relief, you represent that your mother and your brother will provide their written consent to treatment as a QEP for purposes of their 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.⁵

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 X an exemption permitting it to treat your mother and your brother as QEPs and to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding the investments of your mother and your brother in the Fund.

This letter does not excuse X from compliance with any other applicable requirements contained in the Commodity Exchange Act⁶ (Act) and the Commission s 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 in the Fund, 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 X s application for CPO and CTA registration has been pending as of August 10, 1999.

² Commission rules referred to herein are found at 17 C.F.R. Ch.1 (1999).

³ X filed a Notice of Claim of Exemption pursuant to Rule 4.13(a)(2) on behalf of the Fund on _____.

⁴ 17 C.F.R. § 230.501(a)(5) (1999) defines an accredited investor as a person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000.

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

⁶ 7 U.S.C. § 1 et seq. (1994).