

CFTC Letter No. 99-58**September 15, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemptive Relief so that a CPO May Treat Employees of an Affiliated Company as QEPs

Dear :

This is in response to your letter dated June 24, 1999 to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your letter dated August 10, 1999, the letter from A dated August 19, 1999, and telephone conversations with Division staff. By your correspondence you request an exemption from Rule 4.7(a) on behalf of P , a registered commodity pool operator (CPO) and the CPO of three pools (Pools¹) so that P may treat five employees of its wholly-owned affiliate, Q , as though 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. The Pools are operated pursuant to the criteria of Rule 4.7(a).³ Q performs research and executes trades for the Pools. P now wishes to admit as participants in the Pools five non-QEP employees (the Non-QEPs) of Q .

You represent that the Non-QEPs are all knowledgeable employees under the Investment Company Act of 1940, because each is either an executive officer of Q or a non-clerical employee of Q who regularly participates in Q s investment activities and who has been participating in Q s or a previous employer s investment activities for at least twelve months.⁴ You note that Q is a small organization, and Q s management philosophy is to integrate the work of analysts and traders. All Q analysts participate in trading, and all Q traders participate in analysis of transactions. Thus, Q s small size ensures that each analyst and trader is actively involved in making recommendations and decisions that affect the Pools portfolios. Specifically, the Non-QEPs and their qualifications are as follows:

1. B , who is Q s senior trader. B has worked at Q as a trader for almost three years. As Q s senior tra

B is an integral part of Q's investment process, and he has a daily opportunity to review the performance and investments of the Pools.

2. C, who is a financial analyst. C joined Q in July 1998, after having been employed for two years as a financial analyst by T, where he specialized in mergers and acquisitions.

3. D, who is also a financial analyst. D joined Q in January 1999 as an analyst. From November 1997 until joining Q, he was the principal research analyst for U, an investment partnership.

4. E, who is a trader, researcher, and controller for Q. E has been employed by Q since 1996. Her principal responsibility is trading for the Pools. She also engages in performance and tax analysis for the Pools and analyzes research for P's transactions.

5. F, who is Q's Chief Financial Officer. F is responsible for significant investment related functions at Q, requiring her to have an in-depth understanding of the Pools' investment objectives and results. She joined Q in July 1999. From July 1996 until July 1999, F was the chief financial and administrative officer for V, a hedge fund manager.

In further support of your request, you represent that P has obtained the written consent of each Non-QEP to be treated as a QEP.

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 As noted above, you claim that the Non-QEPs, among other things, are each a knowledgeable employee and each actively participates in the trading and analysis of the Pools' transactions.

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 P 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' investments in the Pools.

The relief granted by this letter does not excuse P from compliance with any other applicable requirements contained in the Commodity Exchange Act (the Act⁶) or in the Commission's regulations issued thereunder. For example, P remains subject to all antifraud provisions of the Act and the Commission's regulations, 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 P solely in connection with its operation of the Pools.

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. You must notify us immediately in the event the operations or activities of P or the Pools, including the composition of the investors in the Pools, 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 Specifically, the Pools are R , S , and W .

² 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).

You also sought this relief for unspecified future pool participants who would be knowledgeable employees as defined under the Investment Company Act of 1940. However, the Division does not provide relief with respect to unknown persons and, accordingly, we are declining to act upon this portion of your request. *See* Rule 140.99(b)(4), which provides that Commission staff will not respond to a request for an exemptive letter that is made by or on behalf of an unidentified person. 63 Fed. Reg. 68175 at 68181 (December 10, 1998).

³ P filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to R on July 31, 1996; with respect to S on August 22, 1996; and with respect to W on May 24, 1994.

⁴ See 17 C.F.R. § 270.3c-5 (1999), which defines the term knowledgeable employee.

⁵ 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).

⁶ 7 U.S.C. §1 *et seq.* (1994).