

CFTC Letter No. 00-17**January 28, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7; Request To Treat Non-QEP Employees As
QEPs

Dear :

This is in response to your letter dated October 30, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated January 14, 1999 and February 26, 1999, your electronic mail messages sent October 5, 1999 and December 1, 1999 and telephone conversations with Division staff. By your correspondence, you request exemptive relief on behalf of "P" and "Q", each a registered commodity pool operator ("CPO") (the "CPOs"), such that the CPOs, in connection with their respective operation of the "Funds", may continue to claim relief under Rule 4.7(a),¹ notwithstanding investments in the Funds by employees of the CPOs who are not qualified eligible participants (the "Non-QEPs"), as that term is defined in the rule.²

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Funds invest primarily in non-voting shares of "R", a Cayman Islands company that trades primarily in portfolios of equity securities. "A" is the managing member, listed principal and registered associated person of each CPO.

Each CPO has filed a Notice of Claim for Exemption under Rule 4.7 with respect to the Fund it operates.³ Your request seeks relief so that each CPO may permit the Non-QEPs to invest in the Fund it operates.

The Non-QEPs are:

- (1) "B". "B" has been the CFO of the CPOs since August 1997. "B" is a "knowledgeable employee" as that term is defined in Rule 3c-5 under the Investment Company Act of 1940 ("ICA").⁴

(2) "C". "C" has been Director of Technology of the CPOs since October 1997. "C" is responsible for the entire technology infrastructure of the CPOs, including the choice, customization, and maintenance of trading software. "C" is a "knowledgeable employee" under Rule 3c-5.

(3) "D". "D" has been Office Manager of the CPOs since July 1997. As such, she is responsible for all aspects of day-to-day office management, administration, and investor relations. "D" is a "knowledgeable employee" under Rule 3c-5.

(4) "E". "E" has been Managing Director, Generalist Analyst of the CPOs since August 1998. As such, he researches all potential portfolio investments and provides recommendations with respect to potential investments. "E" is a "knowledgeable employee" under Rule 3c-5.

(5) "F". "F" has been Managing Director, Media/Telecommunications Analyst of the CPOs since April 1998. From September 1996 to March 1998, "F" specialized in the telecommunications and new media industries at "S" in New York. "F" is an "accredited investor" as that term is defined in Rule 501(a)(6) under the Securities Act of 1933. ⁵

(6) "G". "G" has been Controller of the CPOs since April 1998. She was the Accounting Manager at "T" (formerly "W") from April 1996 to April 1998. "G" is an "accredited investor" under Rule 501(a)(6).

(7) "H". "H" has been Associate Director and Trader of the CPOs since January 1998. "H" was a Senior Proprietary Equity Derivatives/Risk Arbitrage Trader at "U" from July 1993 to January 1998. "H" is an "accredited investor" under Rule 501(a)(6).

(8) "I". "I" has been Managing Director, Financial Services Analyst of the CPOs since December 1997. "I" was a Managing Director and Senior Bank Analyst, "V", New York, from April 1993 to December 1997. "I" is an "accredited investor" under Rule 501(a)(6).

Furthermore, each Non-QEP consents to treatment as a QEP for purposes of 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."⁶ As noted above, the Non-

QEPs do not meet the applicable QEP criteria. However, as also noted above, the Non-QEPs are either "knowledgeable employees" as that term is defined under Rule 3c-5 of the ICA or have been employed in the financial services industry for at least two years and are "accredited investors" as that term is defined in Rule 501(a)(6) under the Securities Act of 1933.

Based upon the foregoing representations, it appears that granting your request would not be contrary to the public interest and the purposes of Rule 4.7(a). Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants each CPO 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 Fund it operates, notwithstanding the Non-QEPs' investment in the Fund.

This letter does not excuse the CPOs from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act ("Act")⁷ and the Commission's regulations issued thereunder. For example, the CPOs remain subject to all of the 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 Commission's regulations and to all otherwise applicable provisions of Part 4. Moreover, this relief is applicable to the CPOs solely in connection with their respective operation of the Funds.

This letter, and the exemptions granted herein, are based upon the representations 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 the CPOs or the Funds, including the composition of the participants of the Funds, change in any material way from those 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

cc: Daniel Driscoll

Vice-President, Compliance

National Futures Association

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

2 While your letter requested no-action relief from Rule 4.7(a), we are treating it as a request for exemption from the QEP criteria of Rule 4.7(a).

3 Each CPO filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Fund it operates on _____.

4 17 C.F.R. § 270.3c-5 (1999). As defined therein, a "knowledgeable employee" with respect to a "Covered Company" or an "Affiliated Management Person" is:

(i) An Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, *provided that* such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

A "Covered Company" is defined as a Section 3(c)(1) Company or a Section 3(c)(7) Company. *See* Rule 3c-5(a)(2) under