

CFTC Letter No. 00-62**May 9, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a): -- Request for Exemption to Permit Family Members to Invest in a Rule 4.7 Exempt Pool

Dear :

This is in response to the letter of "A" dated January 14, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by "A's" electronic mail transmission dated February 2, 2000, your letter dated March 30, 2000 and telephone conversations with Division staff.¹ By this correspondence, you request an exemption from Rule 4.7(a)² on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), and "Y", a registered CPO and CTA, who serve as the Co-CPOs of the "Fund", so that the Co-CPOs may treat certain persons, for purposes of investment in the Fund, as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).³

Based upon the representations you made in your correspondence, we understand the facts to be as follows. The Fund is operated pursuant to an effective Claim for Exemption under Rule 4.7(a), filed on January 12, 2000. Thus, interests in the Fund may be sold solely to QEPs.

"B" and "C" are the principals of "X". The Co-CPOs request exemptive relief to permit them to treat 19 family members of "B" and "C" (the "Proposed Investors"), as if they satisfy the QEP criteria of Rule 4.7(a). None of the Proposed Investors are "accredited investors" as that term is defined in Rules 501(a)(5) or (a)(6) under the Securities Act of 1933.⁴ Each Proposed Investor currently trades commodity interests through individual accounts managed by "X", and each will limit his investment in the Fund to the amount in his account currently managed by "X". The Proposed Investors, and their relationship to "B" or "C", are as follows:

Family Member Relationship to "B"

"AA" Cousin
"BB" Mother
"CC" Nephew
"DD" Nephew

"EE" Brother
"FF" Nephew
"GG" Brother
"HH" Son
"II" Nephew
"JJ" Son
"KK" Niece
"LL" Uncle
"MM" Cousin
"NN" Daughter
"OO" Niece
"PP" Nephew
"QQ" Sister

Family Member Relationship to "C"

"RR" Brother
"SS" Father

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 The Commission recently has proposed revisions to Rule 4.7 that would include in the definition of a QEP, among other persons, certain family members of a principal of the CPO of an exempt pool. Specifically, the scope of this proposed revision is limited to spouses, children, parents or siblings. *See* Proposed Rule 4.7(a)(2)(i)(H)(5), 65 Fed. Reg. 11253, 11259-11260, 11265 (March 2, 2000). In light of the Commission's pending proposal, the Division believes that at this time it is appropriate to grant your request solely with respect to the parents, children or siblings of "B" and "C".⁶

Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division hereby grants the Co-CPOs an exemption permitting them to treat "BB", "EE", "GG", "HH", "JJ", "NN", "RR", "SS" and "QQ" as QEPs, and to continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding these persons' investment in the Fund.

This letter does not excuse the Co-CPOs from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations issued thereunder. For example, they remain subject to all 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 regulations, and all other provisions of Part 4. Moreover, this letter is applicable to the Co-CPOs solely in connection with serving as CPOs 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 this exemption void.

You must notify us immediately in the event the operations or activities of the Co-CPOs or the Fund, including the composition of the Fund's investors, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Andrew Shipe, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton
Acting Director

1 "A" is no longer associated with your firm, and you are now responsible for handling this request.

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

3 By your letter dated March 30, 2000, you represented that "Y" also authorized you to make this request.

4 17 C.F.R. §§ 230.501(a)(5) and (a)(6) (1999).

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

6 The comment period on the proposed revisions to Rule 4.7 expired May 1, 2000. In light of the position the Division has taken in this letter, we would accept any comments you may have on proposed Rule 4.7(a)(2)(I)(H)(5) -- *e.g.*, that the definition of a QEP be broadened further to include such pool associates' family members as uncles, aunts, nieces and nephews -- prior to adoption by the Commission of final revisions to Rule 4.7.