

**CFTC Letter No. 01-19**

**March 23, 2001**

**Exemption**

**Division of Trading and Markets**

Re: Request for Exemption from Rules 4.7(b)(2) and 4.7(b)(3)

Dear:

This is in response to your letter dated February 27, 2001, 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 that "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA") and the CPO of the "Master Fund", be granted an exemption from the periodic and annual reporting requirements of Rule 4.22, as modified by Rules 4.7(b)(2) and 4.7(b)(3).<sup>1</sup>

Based upon your representations, we understand the facts to be as follows. In addition to the Master Fund, "X" serves as the CPO of "Feeder Fund I", a Bermuda mutual fund, and "Feeder Fund II", a Delaware limited partnership. Additionally, "X" will serve as CPO of "Feeder Fund III", a yet to be formed Bermuda unit investment trust.<sup>2</sup> The Master Fund will have as its only participants Feeder Fund I, Feeder Fund II, and Feeder Fund III (collectively the "Feeder Funds"). "X" has previously claimed relief under Rule 4.7 with respect to the Master Fund, Feeder Fund I, and Feeder Fund II.<sup>3</sup>

Rules 4.7(b)(2) and 4.7(b)(3) require that a CPO of a pool operated under Rule 4.7 comply with certain periodic and annual reporting requirements, as set forth in the Rule. Therefore, absent the requested exemption, "X" as the CPO of the Master Fund would be required to provide periodic reports and an annual report to itself as the CPO of the Feeder Funds.

Based upon the representations contained in your letter, the Division believes that granting the requested exemption would not be contrary to the public interest and the purposes of Rules 4.7(b)(2), 4.7(b)(3), and 4.22.<sup>4</sup> Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts "X" from the periodic and annual reporting requirements of Rules 4.7(b)(2), 4.7(b)(3), and 4.22, in connection with its operation of the Master Fund. This relief is subject to the conditions that: (i) "X" remains the CPO of the Master Fund and the Feeder Funds; (ii) "X" limits participation in the Master Fund to the Feeder Funds; and (iii) the annual reports of the Feeder Funds contain financial statements that include, among other information, the fees associated with the operation of the Master Fund.<sup>5</sup>

The exemption granted by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")<sup>6</sup> or the Commission's regulations

issued thereunder. For example, it remains subject to all antifraud provisions of the Act and the Commission's regulations issued thereunder, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and to all other applicable provisions of Part 4. Moreover, this letter is applicable to "X" solely in connection with its operation of the Master Fund.

This letter, and the exemption granted herein, is based upon the representations that have been made to us. Any different, changed, or omitted facts or conditions might render the exemption void. You must notify us immediately in the event the operations or activities of "X", the Master Fund, or the Feeder Funds change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

John C. Lawton  
Acting Director

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<sup>1</sup> The Commission recently revised Rule 4.7. *See* 65 Fed. Reg. 47848 (August 4, 2000). All other references to Commission rules cited herein are found at 17 C.F.R.Ch. 1 (2000).

<sup>2</sup> Feeder Fund III is expected to be formed sometime this year.

<sup>3</sup> "X" will file a Notice of Claim of Exemption pursuant to Rule 4.7 with respect to Feeder Fund III when it has been formed.

<sup>4</sup> *See*, CFTC Interpretative Letter No. 00-87, [Current Transfer Binder] Comm.Fut.L.Rep. (CCH) ¶ 28,246 (September 11, 2000); CFTC Interpretative Letter No. 00-85, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,223 (August 9, 2000).

<sup>5</sup> *See*, letter from John C. Lawton, Acting Director, Division of Trading and Markets, to all registered CPOs (January 12, 2001) (<http://www.cftc.gov/tm/tmcpoannualreport2000.htm>). (Stating that "[a]t a minimum, the pool's financial statements should disclose, for each major investee fund: (1) the name of the fund; (2) the carrying value of the instrument; (3) liquidity information (such as limitations on withdrawals from the investee fund); and (4) the summary income statement information discussed in Regulation 4.22(e). This should include fees paid by the investee pool expressed in dollars.").

<sup>6</sup> 7 U.S.C. § 1 *et seq.* (1994), *as amended* by Pub. L. No. 106-554, 114 Stat.2763 (to be codified as

amended in scattered sections of 7 U.S.C.).