

CFTC Letter No. 00-32**February 29, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a); Request for Exemptive Relief so that the
CPO May Treat Employees as QEPs.

Dear :

This is in response to your letter dated February 8, 2000, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). By your correspondence, you request on behalf of "U", a registered commodity pool operator ("CPO"), that the Division permit "U" in connection with its operation of "V", "W", and "X" (collectively, the "Funds"), to treat four investors as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹

Preliminarily, we note that by letter dated November 30, 1999 ("Prior Letter"),² the Division permitted "U" to treat four investors as QEPs and to continue to claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding the participation of the investors in "V" and "W" and the participation of "W" in "X". The Division issued the Prior Letter based upon, among others, representations that the investors were either current or former managing directors of "U", had substantial experience in the financial services industry, and were accredited investors.

Based upon the representations made in your correspondence and in the Prior Letter, we understand the facts to be as follows. "U" serves as the CPO of the Funds. Pursuant to Notices of Claim for Exemption filed under Rule 4.7(a), interests in the Funds may be sold only to QEPs.³ "U" now seeks an exemption to permit an additional four investors, who are not QEPs, to participate in the Funds.

Specifically, the four investors ("Non-QEPs") are:

(1) "A". "A" joined "U" in 1992 and, since 1996, has served as the Director of the Global Derivatives Department. "A" became a managing director of the firm in January 1999.

(2) "B". "B" joined "U" in 1993 and became a managing director of the firm in January 1999. "B" is the managing director responsible for the firm's global equity-linked securities arbitrage

strategies.

(3) "C". "C" joined "U" in 1994 and became a managing director in January 2000. "C" is the manager of the firm's global equity quantitative investment strategies.

(4) "D". "D" joined "U" in 1994 and, since 1995, has served as general counsel of "U". "D" became a managing director in January 2000.

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."⁴ As noted above, the Non-QEPs do not meet the applicable QEP criteria. However, as also noted above, the Non-QEPs are managing directors of "U" and have been employed by "U" for more than six years. As such, it appears that they are "knowledgeable employees" as that term is defined in Rule 3c-5 under the Investment Company Act of 1940.⁵

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 "U" 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 Funds, notwithstanding the participation of the Non-QEPs in "V" and "W" and the participation of "W" in "X".

This letter does not excuse "U" from compliance with any other applicable requirements contained in the Commodity Exchange Act⁶ ("Act") and the Commission's regulations issued thereunder. For example, "U" 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 "U" solely in connection with its operation of the Funds, 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 "U" or the Funds, including the composition of investors, 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 Commission rules referred to herein are found at 17 C.F.R. Ch.1 (1999).

2 CFTC Staff Letter No. 99-53, 2 Comm. Fut. L. Rep. (CCH) ¶27,951 (November 30, 1999).

3 "U" filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) on behalf of "V" on _____
and on behalf of "V" and "X" on _____.

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

5 17 C.F.R. § 270.3c-5 (1999).

6 7 U.S.C. § 1 *et seq.* (1994).