

CFTC Letter No. 99-55**November 30, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.7(a) - Request for Exemptive Relief so that a CPO
May Treat Its Managing Member as a QEP.

Dear :

This is in response to your letter dated August 12, 1999, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your letter dated September 1, 1999 and telephone conversations with Division staff. By your correspondence, you request on behalf of X , a registered commodity pool operator (CPO) and commodity trading advisor (CTA), that the Division permit X , in connection with its operation of the Fund , to treat the managing member of X , A , as if he satisfies the qualified eligible participant (QEP) criteria of Rule 4.7¹(a).

Based upon the representations made in your correspondence, we understand the facts to be as follows. X serves as the CPO of the Fund. Pursuant to a Notice of Claim for Exemption filed under Rule 4.7(a), interests in the Fund may be sold only to QEPs.² X now seeks an exemption to permit A , who is not a QEP, to participate in the Fund.

A is the managing member of X and, as such, he is responsible for the management of the Fund s assets. Also, A is listed as a principal and associated person (AP) of X . From June 1983 until his employment with X , A held various positions in the financial services industry. For example, from September 1991 to January 1993, A was a Director at Y . Although he does not qualify as a QEP, A is an accredited investor as that term is defined in Rule 501(a)(6) under the Securities Act of 1933.³ Finally, in support of your request for relief, you represent that A consents to treatment as a QEP for purposes of his 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.⁴ As noted

above, A does not meet the applicable QEP criteria. However, as also noted above, A : (1) is the managing member and listed as a principal and an AP of X , where he is responsible for the management of X s assets; (2) has been employed for over sixteen years in the financial services industry; and (3) is an accredited investor.

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 to it under Rule 140.93(a)(1), the Division hereby grants X an exemption such that it may continue to claim relief pursuant to Rule 4.7(a) with respect to the Fund, notwithstanding A s investment, and to treat A as a QEP.

This letter does not excuse X from compliance with any other applicable requirements contained in the Commodity Exchange Act⁵ (Act) and the Commission s regulations issued thereunder. For example, X 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 X solely in connection with its operation 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 the exemption void. You must notify us immediately in the event the operations or activities of X or the Fund, 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,

I. Michael Greenberger

Director

¹ 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.1 (1999).

² X filed a Notice of Claim of Exemption pursuant to Rule 4.7(a) on behalf of the Fund on _____.

³ 17 C.F.R. § 230.501(a)(6) (1999) defines an accredited investor as a person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

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

⁵ 7 U.S.C. § 1 et seq. (1994).