

CFTC Letter No. 97-84**October 17, 1997****Division of Trading & Markets**

Re: Rule 4.7(a); Request to Treat Investor as Qualified Eligible Participant

Dear :

This is in response to your letter dated September 24, 1997 to the Division of Trading & Markets of the Commodity Futures Trading Commission ("Commission") as supplemented by telephone conversations with Division staff. By your correspondence, you request relief on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), with regard to the "Fund," a commodity pool operated by "X." You request confirmation that "X" may continue to claim relief under Rule 4.7(a)¹ with respect to the Fund notwithstanding investment in the Fund by a person who is not a qualified eligible participant ("QEP").

Based upon the representations contained in your letter, as supplemented, we understand the relevant facts to be as follows. On September 15, 1997, "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7 on behalf of the Fund. Pursuant to this exemption, interests in the Fund may be sold only to QEPs. However, "X" would like to admit "A," a non-QEP, into the Fund.

In support of your request, you state that "A" is the father of "B," the president, sole shareholder, and sole director of "X." "A" has more than 30 years of investment experience. From the mid-1950's until the late 1960's, "A" served as the director and vice-president of finance for a Fortune 500 mining and manufacturing concern. One of "A's" responsibilities at this company was to supervise the investments of the company's large pension funds. Since his retirement in 1975, "A" has supported himself not only by income from his pension but also from the returns generated by an investment portfolio which he actively manages.

Based upon your representations, it appears that granting the requested relief would not be contrary to the public interest and the purpose of Rule 4.7. Accordingly the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with Rule 4.7(a) if it continues to claim relief pursuant to Rule 4.7, notwithstanding investment by "A" in the Fund. This relief is subject to the condition that "A" consent in writing to being treated as a QEP.

You should be aware that the relief granted to "X" does not excuse "X" from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations thereunder. For example, "X" remains subject to Section 4o of the

Act,² the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and all other provisions of Part 4. Moreover, this relief is applicable to "X" solely in connection with its operation of the Fund.

This letter is based on your representations and is subject to compliance with the condition stated above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations or activities of the Fund, including the composition of its investors, change in any way from those as represented to us. Further, this letter represents the position of the Division only. It does not necessarily represent the views of the Commission or any other Division or office of the Commission.

If you have any questions concerning this correspondence, please contact me or Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

² 7 U.S.C. § 60 (1994).