

**CFTC Letter No. 98-06****January 26, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Relief so that a CPO May Treat an Employee of an Affiliated Company as a Qualified Eligible Participant

Dear :

This is in response to your letter dated January 6, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations between "A", your associate, and Division staff. By this correspondence, you request on behalf of "W", a registered commodity pool operator, that the Division expand the no-action relief it granted to "W" in a letter dated December 29, 1997, in connection with its operation of "X" and "Y". By your letter dated October 10, 1997, "W" had requested relief so that it could treat four employees of "Z", a wholly-owned affiliate of "W", as qualified eligible participants ("QEPs") notwithstanding that these employees failed to satisfy the QEP criteria set forth in Rule 4.7(a).<sup>1</sup> After careful consideration, the Division granted your request as to three "Z" employees, but denied the request as to the fourth, "B". Your January 6 letter asks for reconsideration of the staff's denial of relief to "B". We must deny your request for reconsideration.

Rule 4.7 defines a QEP as an individual that meets certain portfolio and net worth or annual income requirements. The portfolio component requires an individual to possess: (1) a portfolio comprised of securities with a value of at least \$2 million; (2) margin and option premiums on deposit with a futures commission merchant ("FCM") exceeding \$200,000 for the previous six months; or (3) a combination of the two. The net worth or annual income component requires an individual to demonstrate a net worth in excess of \$1 million or an annual income in excess of \$200,000 in each of the two most recent years. "B" meets neither the portfolio nor the net worth or annual income requirements. With respect to the portfolio requirement, you have made representations that

"B" maintains no significant securities investments or sufficient margin or option premiums on deposit with an FCM. With respect to the net worth or annual income requirement, you stated that "B" has a minimal net worth at the present time and his annual salary is approximately \$100,000, only half of the amount required in the QEP definition. The circumstances surrounding "B's" employment with "Z" also fail to warrant further relief from the QEP requirements. "B" graduated from college during the spring of 1996, less than two years ago. "B's" recent employment and his relative inexperience in the securities industry are not sufficient at this time to persuade us to grant relief from the standards set forth in our rules.

If you would like to discuss this matter further, please feel free to contact me or Charles O'Brien, an attorney on my staff, at (202) 418-5430.

Sincerely,

I. Michael Greenberger

Director

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