

**CFTC Letter No. 98-10****February 5, 1998****Division of Trading & Markets**

Re: Rule 4.7(a); -- Request to Treat Certain Investors as Qualified Eligible Participants

Dear :

This is in response to your letter dated December 1, 1997, to the Division of Trading and 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 "S" that certain investors in "T" and "U" (the "Funds"), may be treated as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>1</sup> The Funds, which are currently being operated by "S", invest primarily in securities of United States issuers. "S" has filed for registration as a commodity pool operator ("CPO") and, upon registration, the Funds will trade commodity interests. While "S" is responsible for the management of the Funds' portfolios, "V", an affiliated entity,<sup>2</sup> provides administrative and management services to the Funds.

Based upon your representations, we understand the relevant facts concerning the Funds to be as follows. The Funds began trading as of November 10, 1997. Pursuant to a Notice of Claim of Exemption filed in accordance with Rule 4.7(a), interests in the Funds may be sold only to QEPs.<sup>3</sup> "S" now seeks relief to permit it to accept investments from the following non-QEPs (the "Proposed Non-QEP Participants").<sup>4</sup> The Proposed Non-QEP Participants are:

(1) "B", who is a member of "V's" senior management and an equity owner of "W". "B" has been a senior analyst and portfolio manager of "V" since September 1997. In this capacity, "B" is closely involved with the day-to-day trading activities of the Funds. A certified public accountant who holds a law degree, "B" has substantial accounting and investment experience. He was a staff accountant for "Z" between 1986 and September 1989, and a portfolio manager for "X", a securities broker-dealer, between 1989 and 1997. His application for registration as an associated person ("AP") of "S" and "V" and for listing as a principal thereof currently is pending. Finally, "B" is an accredited investor under Regulation D of the Securities Act of 1933.

(2) "C", who has been employed by "V" as an analyst and portfolio manager since October 1997. In this capacity, "C" is part of the team which makes

the day-to-day investment decisions regarding the Funds. "C" earned a degree in political science in 1993. From June 1994 until October 1997, "C" was employed as a research analyst and trader with "Y". While at "Y", "C" worked with "A", the Chairman, Chief Executive Officer of "V" and the Chairman, Chief Executive Officer and President of "S". "C" currently earns \$75,000 per year, and his net worth is \$165,000. His application for registration as an AP of "S" and "V" also is currently pending.

(3) Accounts for the Benefit of the Minor Children of "A". These accounts were established by "A" who is a QEP and who has over 18 years experience in asset management. "A" also has sole voting control of "S" and "V" and makes all final portfolio decisions for the Funds.

(4) Trusts for the Benefit of the Minor Children of "A" which were also established by "A". The trustee is "D", the brother of "A". "D" is the chief operating officer of "V" and the chief financial officer of "S". Though not a QEP, "D" is an accredited investor who held a number of financially-related positions with "R", a telecommunications company, between March 1986 and September 1997. His application for registration as an AP and principal of "S" and "V" is pending.

In support of your request, you represent that "S" will obtain the written consent of each Proposed Non-QEP Participant to be treated as a QEP and further, that each Proposed Non-QEP Participant has access to all of the books and records relating to the Funds.

Based upon the foregoing, it appears that granting the requested relief 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 "S" an exemption such that it may continue to claim relief pursuant to Rule 4.7(a), notwithstanding investment by the Proposed Non-QEP Participants in the Funds, and to treat the Proposed Non-QEP Participants as QEPs.

The relief granted by this letter does not excuse "S" from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations thereunder. For example, "S" remains subject to Section 4o of the Act,<sup>5</sup> 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 "S" solely in connection with its operation of the Funds, as discussed above.

This letter, and the exemption granted herein, is based on the representations that have been made to us. Any different, changed or omitted material facts or circumstances might require us to withdraw the exemption. You must notify us immediately in the event that the operations or

activities of the Funds, including the composition of their investors, change in any material way from those as represented to us.

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

Very truly yours,

I. Michael Greenberger

Director

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

<sup>2</sup> "S" and "V" are affiliated by common ownership. Both are owned by "A" and "W". The partners of "W" include a number of "V" employees and family members of "A".

<sup>3</sup> "S" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Funds on November 14, 1997.

<sup>4</sup> Although your letter was styled as a request for a no-action letter, we have treated it as a request for exemptive relief.

<sup>5</sup> 7 U.S.C. § 60 (1994).