

CFTC Letter No. 98-11**February 23, 1998****Division of Trading & Markets****Re: Rule 4.7(a) -- Request for Relief so that a CPO May Treat an Investor as a Qualified Eligible Participant**

Dear :

This is in response to your letter dated December 24, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmission dated January 27, 1998 and by telephone conversations with Division staff. By your correspondence, you request relief on behalf of "X", a registered commodity pool operator ("CPO"), so that an investor in (the "Fund")¹ may be treated as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a). After careful consideration by Commission staff, the Division has decided to deny your request for relief.

Rule 4.7(a) requires that in order for an individual to qualify as a QEP, he must meet certain portfolio and net worth or annual income requirements. The portfolio component requires an individual to: (1) own securities and other investments with an aggregate market value of at least \$2 million; (2) have on deposit with a futures commission merchant initial margin and option premiums exceeding \$200,000 for the previous six months; or (3) own a portfolio comprised of a proportionate blend of the items specified in (1) and (2). The net worth or annual income component requires that an individual have 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.² "A", the prospective investor, meets neither the portfolio nor the net worth or annual income requirements. With respect to the portfolio requirement, you have represented that "A" owns securities and other investments with an aggregate value of \$400,000, which represents only twenty percent of the required portfolio amount. With respect to the net worth or annual income requirement, you have represented that "A" has a net worth of \$800,000 and had an annual income of approximately \$105,000 in 1996 and \$170,000 in 1997. These figures fall short of the required net worth or annual income levels in Rule 4.7(a), nor do there appear to be other facts or circumstances that would support "X's" request to treat "A" as if he satisfies the QEP criteria of Rule 4.7(a).

If you would like to discuss this matter further, please feel free to contact Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Sincerely,

I. Michael
Greenberger

Director

¹ "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Fund on July 17, 1995. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

² Pursuant to Regulation D under the Securities Act of 1933, a natural person who satisfies either of these financial requirements is an accredited investor.