

CFTC Letter No. 98-16**February 27, 1998****Division of Trading & Markets****Re: Rule 4.7(a); Request for Exemptive Relief to Treat a Prospective Investor as a Qualified Eligible Participant and for Exemptive Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools**

Dear :

This is in response to your letter dated November 17, 1997 to the Division of Trading and Markets ("Division") 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,¹ so that an investor in (the "Fund") may be treated as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).² You also seek relief from the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) in connection with "X's" operation of the Fund.

Based upon your representations, we understand the pertinent facts to be as follows. The Fund is being operated pursuant to the criteria of Rule 4.7(a). Accordingly, interests in the Fund have been sold only to QEPs. "X" now seeks to admit "A", who has been a computer analyst for "X" and a trader and analyst for "Y", a securities broker-dealer,³ since 1988. As a computer analyst for "X", "A" implements analytical trading models for the Fund and works with "X's" traders who execute trades on behalf of the Fund. In this respect, "A" participates in the management of the Fund's investment portfolio. Among other things, the Fund trades securities, futures, and derivatives. "A" also previously worked as the comptroller for "Y" and "X" from 1985 until he became a computer analyst for "X", and as a repo trader for "Y" from 1982 until 1985. Though he is not a QEP, "A" is an accredited investor under Regulation D of the Securities Act of 1933.

In support of your request, you represent that "A" will consent to being treated as a QEP. You also agree that "A" will be given access to the books and records of the Fund.

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 "X" an exemption such that it may treat "A" as a QEP and continue to claim relief pursuant to Rule 4.7(a) notwithstanding his investment. "X" is further permitted, notwithstanding "A's" investment, to invest more than ten percent of the fair market value of the Fund's assets in Rule 4.7(a) exempt pools.

The relief granted by this letter 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 40 of the Act,⁴ 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, as discussed above.

This letter, and the exemption granted herein, are based both upon the representations you have made to us and the conditions stated above, and are applicable to "X" solely in connection with its service as the CPO of the Fund. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event the operations or activities of "X" or the Fund, including the composition of the investors in the Fund, change in any material way from those as represented to us. Further, this relief is prospective only. Since the Fund began operating prior to this grant of relief, nothing herein should be construed as limiting in any way the Commission's ability to institute enforcement proceedings or other action against "X" for any past violation of the Act or Commission regulations.

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

¹ "X" also is registered as a commodity trading advisor ("CTA").

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

³ "Y" also provides administrative and clerical services to the Fund. Its three principals are the sole shareholders of three of the five corporations which serve as general partners of "X".

⁴ 7 U.S.C. § 60 (1994).