

CFTC Letter No. 98-28**March 31, 1998****Division of Trading & Markets**

Re: Rule 4.7(a); -- Request for Confirmation of Exemptive Relief from the Ten Percent Limitation on Investments in Exempt Pools by New General Partner and for Continuation of Relief Notwithstanding the Admission of Additional Limited Partners

Dear :

This is in response to your letter dated January 5, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated February 25, 1998 and telephone conversations with Division staff. By your correspondence, you request confirmation that the exemptive relief from the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi)¹ that the Division previously granted to the "Corporation", the general partner and commodity pool operator ("CPO") of the "Partnership", may be claimed by "S" upon "S" becoming the general partner and CPO of the Partnership. You also request confirmation of this relief if an additional limited partner, a qualified eligible participant ("QEP"), becomes a participant in the Partnership.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Corporation is engaged in the "B" business and is closely held and owned exclusively by members of the "A" family. It has a net worth in excess of \$70 million and serves as the general partner and CPO of the Partnership. The Partnership, in turn, was formed by the Corporation on _____, to serve as an investment vehicle exclusively for members of the "A" family and certain executive officers and directors of the Corporation. Participation in the Partnership has been made available to those family members, officers and directors that qualify as accredited investors as that term is defined in Regulation D under the Securities Act of 1933. As of February 25, 1998, the Partnership had in excess of \$64 million in assets. The Corporation operates the Partnership pursuant to a Claim of Exemption from CPO registration under Rule 4.13(a)(1)²

On July 20, 1994, the Division granted relief to the Corporation to permit the Partnership, a QEP that meets the criteria of Rule 4.7(a)(1)(ii)(B)(2)(xi), to invest more than ten percent of its assets in Rule 4.7 exempt pools notwithstanding the fact that not all of the participants in the Partnership are QEPs. The relief was based upon representations that: (1) with the exception of the Corporation's executive vice president, who was responsible for managing the Partnership on behalf of the Corporation, each limited partner of the Partnership was a member of the "A" family; (2) each participant in the Partnership had extensive investment experience; (3) all but one of the

participants had a net worth of approximately \$2 million; (4) each participant had an investment portfolio of at least \$1,575,000, including the shares of the Corporation; (5) each participant consented to the waiver of the ten percent limitation; and (6) any Rule 4.7 exempt pool in which the Partnership invested would devote most of its assets to securities trading, in a manner consistent with Rule 4.12(b), such that its commodity interest trading would be incidental to its securities trading.

The Corporation is now seeking to transfer its interest in the Partnership to "S" and "T", two newly-formed entities that will be wholly-owned by the Corporation, and to admit "U" as a limited partner in the Partnership. Upon that transfer, "S" will become the general partner and CPO of the Partnership and will claim exemption from CPO registration under Rule 4.13(a)(1).³ "S" also will have assets in excess of \$5 million. "T", which will be a limited partner in the Partnership, will have assets in excess of \$50 million. Thus, both "S" and "T", who will be managed by an officer of the Corporation, will be QEPs. "U", the entity the Corporation seeks to admit as a new limited partner, will be owned by the Corporation and three dynasty trusts established by members of the "A" family, each with \$1 million in assets. It will have assets in excess of \$10 million and will invest \$3 million in the Partnership. In addition, "U" is being formed to hold certain operating assets of the Corporation and not for the specific purpose of investing in the Partnership.

In support of your request, you assert that the Corporation's transfer of its interest in the Partnership to "S" and "T" should have no detrimental effect on the Partnership or any of its existing limited partners. You represent that "S" and "T" both qualify as QEPs under Rule 4.7(a)(1)(ii)(D) in that they are both owned exclusively by the Corporation, an entity that itself qualifies as a QEP under Rule 4.7(a)(1)(ii)(B)(2)(xi). You also assert that since "U" is a QEP, its admission to the Partnership should not jeopardize the relief previously granted by the Division to the Corporation. "U" qualifies as a QEP under Rule 4.7(a)(1)(ii)(B)(2)(viii) by virtue of the fact that it will own securities of unaffiliated issuers with an aggregate market value of at least \$2 million and will be a corporation with total assets in excess of \$5 million not formed for the specific purpose of participating in the exempt pool.⁴

Based upon the foregoing, it appears that your request 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 confirms that "S" may claim the exemption from the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) that previously had been granted to the Corporation. The Division also confirms the grant of this exemptive relief, notwithstanding the participation of "T" and "U" as limited partners in the Partnership. The relief granted in this letter, however, is subject to the condition that "S" will file a Rule 4.13(a)(1) Claim of Exemption with respect to the Partnership by no later than five calendar days after it becomes the general partner and CPO of the Partnership.

The relief granted by this letter does not excuse "S", upon its becoming the general partner and CPO of the Partnership, 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", will then become subject to Section 4o of the Act,⁵ 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 Partnership, as discussed above.⁶

This letter, and the exemption confirmed herein, are based both upon the representations you have made to us and the conditions stated above, and is applicable to "S" solely in connection with serving as the general partner and 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 "S" or the Partnership, including the composition of the investors in the Partnership, 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

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

² Commission records indicate that the Corporation filed a claim of exemption under Rule 4.13 on June 30, 1994.

³ You assert that "S" will be exempt from registration as a CPO pursuant to Rule 4.13(a)(1) because: (a) "S" will receive no compensation, directly or indirectly, for operation of the Partnership; (b) "S" will operate no other pools; (c) "S" otherwise will not be required and will have no business affiliate otherwise required to register with the Commission; and (d) no person will do any advertising in connection with the Partnership.

⁴ Even though "S", "T" and "U" all qualify as QEPs, you were concerned about making the proposed changes in the organization and composition of the Partnership given our request in the July 20, 1994 letter that you "notify us immediately in the event the operations or activities of the Partnership, the Corporation, or the participants in the Partnership change in any way from those as represented to us."

⁵ 7 U.S.C. § 6o (1994).

⁶ Of course, the Corporation also is subject to these requirements for the period during which it serves as

the general partner and CPO of the Partnership.