

**CFTC Letter No. 98-34****May 22, 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 February 19, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") as supplemented by your letter dated March 16, 1998 and by telephone conversations with Division staff. By your correspondence, you request relief on behalf of "T", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), that the Division permit "T", in connection with its operation of "U" and "V" (collectively the "Funds"), to treat certain employees of "T" and its affiliated companies and certain family members of these employees as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>1</sup>

Based upon the representations made in your correspondence, we understand the facts to be as follows. "T" is wholly owned by "W", which also is a registered CPO and CTA. The majority owner of "W" is "X", a private equity and venture capital firm owned by "A" and members of "A's" immediate family. "U" began operating on September 8, 1997. "V" has yet to begin operating.<sup>2</sup> The Funds are global macro hedge funds and invest in fixed income securities, foreign currencies, equity indices and various commodities in both the cash and futures markets. Pursuant to a Notice of Claim for Exemption filed in accordance with Rule 4.7(a), interests in the Funds may be sold only to QEPs.<sup>3</sup> "T" now seeks relief to allow it to accept investments from the following non-QEPs (the "Non-QEP Participants"):<sup>4</sup>

(1) "AA", who is the Managing Director and a registered Associated Person ("AP") of "T". He is also listed as a principal, the Chief Executive Officer ("CEO") and a registered AP of "W". "AA" has been the CEO of "W" since "W's" founding in April 1996. In this capacity, "AA" is closely involved with the day-to-day trading activities of the Funds. "AA" holds a law degree and an MBA from "AB" and has substantial legal, financial and investment experience. He was an attorney at the law firm of "AC" from 1985 to 1990, senior vice president of corporate finance for the investment bank of "AD" from 1990 until 1995 and vice president of emerging markets for the investment firm of "AE" from 1995 until joining "W". "AA" is an accredited investor under Regulation D of the Securities Act of 1933. In addition, "AA" has successfully completed both the Uniform Securities Agent State Law ("Series 63") and the Uniform Investment Adviser Law ("Series 65") examinations.

(2) "B", who is the Treasurer and Chief Financial Officer of "X" and a certified public accountant. "B" oversees all of "X's" investment, including its investment in "W" and the Funds. "B" holds a Bachelor's degree from "BB" and has substantial financial and accounting experience. He was an assistant controller for the "BC", a hotel management company, from 1980 until 1981 and a vice president for the accounting firm of "BD" from 1981 until joining "X" in 1996. "B" had an income of approximately \$180,000 in 1997 and \$170,000 in 1996.

(3) "C", who is an Assistant Portfolio Manager for "W". "C" is involved in trading bonds, options and foreign currencies for the Funds. "C" holds a Bachelor's degree from "CC" and has seven years of investment management experience. She was a bond trader for the investment firm of "AE" from 1991 until 1993 and the senior bond trader for the global fixed income group of "CD" from 1993 until joining "W" in 1997. "C" had an income of approximately \$125,000 in 1997 and \$80,000 in 1996.

(4) "D", who is a registered AP of "T" and an Assistant Portfolio Manager for "W". "D" is involved in trading bonds, options and foreign currencies for the Funds. "D" holds a Bachelor's degree from "DD" and has eight years of investment management experience. She was a research and trading systems analyst in the global derivatives unit of the investment firm of "DE" from 1985 until 1989, the founder and president of the investment firm "DF", where from 1991 until 1994 she managed a \$50 million global derivatives position, a consultant to a non-profit arts program from 1994 until 1996 and an internet consultant for "DG" from 1996 until joining "W" in 1997. "D" had an income of approximately \$60,000 in both 1997 and 1996.

(5) "E", who is an Assistant Portfolio Manager for "W". "E" is involved in trading emerging market fixed income instruments and foreign currencies for the Funds. "E" holds both a Bachelor's and a Master's degree in finance from "EE" and "EF", respectively, and has nine years of investment management and custody experience. He was employed in the global custody department of "EG" from 1989 until 1992 and as a member of the emerging markets fixed income group and the compliance and control group of "AE" from 1992 until joining "W" in 1996. "E" had an income of approximately \$42,000 in 1997 and \$40,000 in 1996. In addition, "E" has successfully completed the Series 65 examination and is a Chartered Financial Analyst candidate, having successfully passed the CFA Level I examination.

(6) "F", who is an Assistant Portfolio Manager for "W". "F" is an analyst responsible for monitoring emerging markets and fixed income instruments, constructing portfolios and performing trading and investment research for the Funds. "F" holds a Bachelor's degree in finance from "FF" and has seven years of investment management and capital markets experience. She was a staff member of "FG" in Russia responsible for developing exchange rules and procedures for

trading from 1991 until 1992 and as an administrator and analyst in the global bond group of "AE" from 1994 until joining "W" in 1996. "F" had an income of approximately \$42,000 in 1997 and \$40,000 in 1996. In addition, "F" has successfully completed the Series 65 examination and is a Chartered Financial Analyst candidate, having successfully passed the CFA Level I examination.

(7) "G", who is the Controller of "X". "G" is involved in the preparation and review of financial reports relating to all of "X's" investments, including its investment in "W" and the Funds. "G" holds a Bachelor's degree in accounting from "FF" and a Master's degree in finance from "EF" and has six years of financial and accounting experience. She was employed by the Bank of "GG" in its leasing division from 1992 until joining "X" in 1994. "G" had a joint income with her husband of approximately \$83,000 in 1997 and \$80,000 in 1996.

In support of your request, you represent that each Non-QEP Participant consents to being treated as a QEP and further, that each Non-QEP Participant has access to all of the books and records relating to an investment in 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 "T" an exemption such that it may continue to claim relief pursuant to Rule 4.7(a), notwithstanding investment by the Non-QEP Participants in the Funds, and to treat the Non-QEP Participants as QEPs.

In addition, you also requested relief so that "T" may treat "I" and "J", who are the father- and mother-in-law, respectively, of "K", the portfolio manager of the Funds, "L" and "M", who are the parents of "AA" (*see above*), "N" and "O", who are the father- and mother-in-law, respectively, of "G" (*see above*), and "P", who is the husband of "G" (collectively, the "Relations"), as QEPs. The Division is declining at this time to provide "T" the requested relief as to the Relations.

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

This letter, and the exemption granted herein, are based upon the representations you have made to us. 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 "T" or the Funds, including the composition of the Funds' investors, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Charles O'Brien, an attorney on my staff, at (202) 418-5450.

Sincerely,

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> Although "V" has yet to begin operating, the present tense is used herein in describing the Fund's activities.

<sup>3</sup> On October 2, 1997, "T" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) on behalf of the Funds.

<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. § 1 *et seq.* (1994).