

**CFTC Letter No. 98-37****June 5, 1998****Division of Trading & Markets**

Re: Rule 4.7(a); -- Request for Exemption from the Ten Percent Limitation on Investments in Exempt Pools under Rule 4.7(a)(1)(ii)(B)(2)(xi)

Dear :

This is in response to your letter dated December 5, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated March 4, 1998 and telephone conversations with Division staff. By your correspondence, you request an exemption from the ten percent limitation on investments in exempt pools under Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation")<sup>1</sup> on behalf of "U" a registered commodity pool operator ("CPO"), in connection with its operation of the "Partnership". The Partnership does not currently invest its assets in commodity futures or options but would like to begin doing so on a limited basis. Although all of the participants in the Partnership are qualified eligible participants ("QEPs"), one of the participants, the "A" and "B" Trust (the "Trust"), is an entity in which not all of the "unit owners or participants" are QEPs.<sup>2</sup> Accordingly, absent relief from the Division, "U" is prohibited, pursuant to the Ten Percent Limitation, from accepting more than ten percent of the fair market value of the Trust's assets to purchase units in the Partnership, an exempt pool.

Based upon your representations, we understand the facts to be as follows. The Trust was established in December 1989 for estate planning purposes by and for the benefit of "A" and his wife, "B". At present, the Trust owns securities of unaffiliated issuers and other investments valued in excess of \$5 million. Accordingly, it meets the QEP criteria of Rule 4.7(a)(1)(ii)(B)(2)(xi). "A", the trustee and a beneficiary of the Trust, makes all the investment decisions for the Trust. He is a QEP pursuant to Rule 4.7(a)(1)(ii)(B)(1)(ix). "A" also has substantial investment and financial experience. He is the president of "V", a producer of "W", and a director of "X", a venture capital fund. "B", the other beneficiary of the Trust is not, however, a QEP. Therefore, based upon the Ten Percent Limitation, and absent the relief requested herein, "U" may accept no more than ten percent of the fair value of the Trust's assets to purchase units in the Partnership. In support of your request, you represent that the settlors of the Trust, "A" and "B", will consent to the Trust's operating pursuant to a waiver from the Ten Percent Limitation.

Based upon the foregoing, it appears that granting 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 hereby grants "U" an exemption from Rule 4.7(a)(1)(ii)(B)(2)(xi) such that it may accept more than ten percent of the fair market value

of the Trust's assets for the purpose of investing in the Partnership.

This letter does not excuse "U" from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations thereunder. For example, "U" remains subject to all antifraud provisions of the Act and 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 "U" solely in connection with its operation of the Partnership, as discussed above.

This letter, and the exemption granted herein, are based upon the representations you have made to us and are applicable to "U" solely in connection with its serving as the CPO of the Partnership. 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 "U" 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

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

<sup>2</sup> By letter dated December 5, 1997, you initially sought relief to permit "U" to treat the Trust as a QEP. You subsequently withdrew that request and sought the instant relief from the Ten Percent Limitation after you determined, as discussed below, that the Trust was in fact a QEP.