

**CFTC Letter No. 98-38****June 5, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) - "X"; Request for Exemptive Relief to Treat the Children of the Chairman and CEO of the Commodity Pool Operator as Qualified Eligible Participants.

Dear :

This is in response to your letter dated February 11, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by a letter dated March 18, 1998 and telephone conversations with Division staff, wherein you request exemptive relief on behalf of "X", a registered commodity pool operator ("CPO") and the general partner of the "Fund", to permit your adult children to be treated as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a)<sup>1</sup> in connection with the operation of the Fund.<sup>2</sup>

Based upon the representations made in the foregoing correspondence, we understand the facts to be as follows. "X" is a registered investment adviser and currently manages two registered investment companies, each of which has an approximate value of \$100,000,000.<sup>3</sup> You are the sole owner, Chairman and CEO of "X" and are registered as an associated person ("AP")<sup>4</sup> of that corporation. You also are a QEP.

The Fund has a current fair market value of \$5,400,000 and has engaged in the buying and selling of securities for the past nine years. The Fund now wishes to trade commodity interests on a limited basis. All of the Fund's participants are QEPs with the exception of your children, "B"; "C"; "D"; and "E" (collectively, the "F" Children). "X" seeks relief to permit it to operate the Fund as a Rule 4.7 exempt pool despite the "F" Children's participation in the Fund.

In support of your request, you represent that all of the investment decisions for the Fund will be made by "X" and that none of the "F" Children has contributed any personal income to the Fund. Rather, their individual interests are exclusively comprised of monetary gifts from you.

In further support of your request, you represent that each of the "F" Children: (1) will consent in writing to being treated as a QEP; and (2) will have access to the books and records relevant to an investment in the Fund.

Based upon the foregoing representations, 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 claim relief pursuant to Rule 4.7(a), notwithstanding the participation of the "F" Children in the Fund, and to treat the "F" Children as QEPs. This exemption will become effective upon the filing of a Notice of Claim for Exemption by "X" which satisfies the requirements of Rule 4.7(a) (3).

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")<sup>5</sup> or in the Commission's regulations issued thereunder. For example, "X" remains subject to all of the antifraud provisions of the Act and the Commission's regulations issued thereunder, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and all otherwise applicable 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 upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activities of "X" or the Fund, including the composition of the Fund's participants, change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Jocelyn B. Barone, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

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

<sup>2</sup> Your February 11, 1998 letter did not include sufficient information to enable the Division to determine the nature of your request for relief, the rule pursuant to which relief was requested, or the facts supporting your request. By letter dated March 18, 1998, "A", Vice President of Operations for "X", clarified your initial letter by specifically requesting that the Division: (1) confirm that "X" may claim relief pursuant to Rule 4.12(b) and/or (2) grant "X" an exemption such that it may claim relief pursuant to Rule 4.7(a), notwithstanding the participation of your children in the Fund. By our letter, the Division is granting "X's" request for relief under Rule 4.7(a). The relief provided by Rule 4.7(a) is more extensive than that provided by Rule 4.12(b). Accordingly, the Division has not separately considered "X's" request for relief under Rule 4.12(b).

<sup>3</sup> The registered investment companies are "Y" and "Z".

<sup>4</sup> National Futures Association records indicate that your registration as an AP of "X" became effective on January 9, 1998.

<sup>5</sup> 7 U.S.C. § 1 et seq. (1994).