

CFTC Letter No. 98-39

June 16, 1998

## Division of Trading &amp; Markets

Re: Rule 4.7(a); Request for Exemptive Relief to Treat a Prospective Investor as a Qualified Eligible Participant and for Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools.

Dear :

This is in response to your letter dated April 14, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by a letter dated June 1, 1998 from your associate, "A", and telephone conversations between "A" and Division staff, wherein you request exemptive relief on behalf of "X", a registered commodity pool operator ("CPO"), and the general partner of the "Fund" so that "B", a prospective investor, may be treated as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>1</sup> You further request relief from Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation") to permit "X" to continue to invest more than ten percent of the Fund's assets in Rule 4.7(a) exempt pools, notwithstanding the participation of "B" in the Fund.<sup>2</sup>

Based upon the representations made in the correspondence, we understand the facts to be as follows. The Fund is being operated pursuant to the criteria of Rule 4.7(a).<sup>3</sup> All of the Fund's investors are QEPs with the exception of two persons for whom the Division previously granted relief from the QEP criteria.<sup>4</sup> "X" now seeks to admit an additional non-QEP investor into the Fund.

The proposed non-QEP participant is "B". While "B" has sufficient annual income to satisfy the requirement of Rule 4.7(a)(1)(ii)(B)(2),<sup>5</sup> the market value of the securities he owns is significantly less than that required by Rule 4.7(a)(1)(ii)(B)(1).<sup>6</sup> Moreover, "B" is not employed by "X", any of its affiliates or the Fund.<sup>7</sup>

In light of the size of "B's" investment portfolio relative to that required by Commission rules for QEP treatment, and the lack of any relationship between "B" and "X" or the Fund, the Division is declining at this time to permit "X" to treat "B" as a QEP for the purpose of investing in the Fund.<sup>8</sup>

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> By letter dated November 12, 1997, the Division granted relief to "X" to permit it to invest more than ten percent of the Fund's assets in Rule 4.7 exempt pools, notwithstanding the participation of two non-QEP investors in the Fund.

<sup>3</sup> "X" filed a Notice of Claim for Exemption under Rule 4.7(a) with respect to its operation of the Fund on February 15, 1995.

<sup>4</sup> By letters dated March 10, 1995 and November 12, 1997, respectively, the Commission granted "X" relief to permit "C", a Senior Vice President and a principal of "X", and "D", the wife of the President and Executive Managing Director of "X", to be treated as a QEPs.

<sup>5</sup> "B's" annual income is in excess of \$500,000.

<sup>6</sup> "B" owns unaffiliated securities having a market value of \$480,000.

<sup>7</sup> By contrast, in each of the letters you cited in support of your request, the CPO at issue was permitted to treat certain non-QEPs as QEPs based upon, among others, representations that the non-QEPs were employees of the CPO or an affiliate.

<sup>8</sup> Because the Division has denied relief from the QEP criteria with respect to "B", it has not been necessary for the Division to address "X's" request for continued relief from the Ten Percent Limitation.