

CFTC Letter No. 98-48**June 22, 1998****Division of Trading & Markets**

Re: Request for Exemptive Relief to Treat Trust as a Qualified Eligible Participant ("QEP") under Rule 4.7(a)(1)(ii)(D)

Dear :

This is in response to your letter dated May 8, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmission dated May 12, 1998 and telephone conversations with Division staff. By your correspondence, you request an exemption from Rule 4.7(a) on behalf of "X", a registered commodity pool operator ("CPO") and the CPO of the "Pool", so that it may treat a trust as if it satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹ In addition, you request confirmation of your view that "X" may treat the Pool as if it satisfies the QEP criteria of Rule 4.7(a)(1)(ii)(D).

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool is operated pursuant to the criteria of Rule 4.7(a).² "X" now wishes to admit the "Trust", a non-QEP, as a participant into the Pool. The Trust has assets of approximately \$77,000.³ "A", the Chairman of the Board of "X" and a QEP, established the Trust for estate planning and investment purposes, and its sole beneficiary is "B", a teenage son of "A". "X" is the investment adviser to the Trust and is responsible for making all investment decisions on behalf of the Trust. Absent the requested exemption, "X" would be prohibited from accepting the Trust as a participant in the Pool. In support of your request: (1) you have provided a letter dated March 20, 1998 wherein "D", the Trustee of the Trust, consents to the Trust's treatment as a QEP; and (2) you represent that "A", on behalf of "X", the Trust's investment adviser, will have access to all information pertinent to an investment in the Pool.

In addition, "X" wishes to invest more than ten percent of the Pool's assets in other pools for which the CPOs thereof have claimed relief pursuant to Rule 4.7(a). However, Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation") provides that "except where the pool . . . would constitute a qualified eligible participant under paragraph (a)(1)(ii)(D) of [Rule 4.7], no more than 10 percent of the fair market value of the assets of such entity are used to purchase units in exempt pools." Rule 4.7(a)(1)(ii)(D) defines as a QEP "an entity in which all of the unit owners or participants are persons listed in paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of [Rule 4.7]." You assert that if the Division permits "X" to treat the Trust as

if it satisfies the QEP criteria for purposes of investing in the Pool, then "X" should also be permitted to treat the Trust as a QEP under Rule 4.7(a)(1)(ii)(D). Since the Pool's status as a QEP would then be based on Rule 4.7(a)(1)(ii)(D), and not Rule 4.7(a)(1)(ii)(B)(2) (xi), the Ten Percent Limitation would not be implicated.

Based upon the foregoing representations, it appears that granting the requested relief would not be contrary to the public interest and 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 treat the Trust as a QEP and continue to claim relief pursuant to Rule 4.7(a) notwithstanding the Trust's investment in the Pool. Further, based upon this determination and the reasoning set forth above, the Division grants "X" an exemption such that it may treat the Trust as a QEP for purposes of qualifying the Pool itself as a QEP under Rule 4.7(a)(1)(ii)(D).

The exemptions granted by this letter do not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁴ or the Commission's regulations issued thereunder. For example, "X" remains subject to all antifraud provisions of the Act and the Commission's regulations issued thereunder, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and to all other applicable provisions of Part 4. Further, this letter is applicable to "X" solely in connection with its operation of the Pool.

This letter, and the exemptions granted herein, are based upon the representations that have been made to us. Any different, changed or omitted material facts or circumstances might render these exemptions void. You must notify us immediately in the event the operations or activities of "X" or the Pool, including the composition of the participants in the Pool, change in any material way from those as represented to us.

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

Very truly yours,

I. Michael
Greenberger

Director

¹ Although your letter was styled as a request for a "no-action" position, we are treating it as a request for exemptive relief. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

² "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Pool effective . Thus, interests in the Pool may be sold only to QEPs.

³ Thus, the Trust does not qualify as a QEP since it does not have total assets in excess of \$5 million. See Rule 4.7(a)(1)(ii)(B)(2)(xi).

⁴ 7 U.S.C. § 1 *et seq.* (1994).