

CFTC Letter No. 98-51**June 22, 1998****Division of Trading & Markets**

Re: Request to Treat Investor as a Qualified Eligible Participant under Rule 4.7(a)

Dear :

This is in response to your letter dated May 19, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request exemptive relief on behalf of "X", a registered commodity pool operator ("CPO") and the CPO of the "Pool", so that "X" may treat "A" as if she satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool is operated pursuant to Rule 4.7(a).² "X" proposes to admit "A", who is not a QEP, as a participant in the Pool. In support of your request, you represent, among other things, that "A": (1) is the wife of "B", who is the sole proprietor of "Y", a registered commodity trading advisor ("CTA") and the CTA of the Pool; (2) is the co-owner of a joint account that is an existing participant in the Pool;³ (3) assisted "B" in establishing "Y"; (4) currently serves as "Y's" office manager, providing accounting, bookkeeping, employee benefits and general business advice; (5) qualifies as an accredited investor as defined in Regulation D under the Securities Act of 1933; and (6) is an attorney who has practiced corporate and real estate law for six years. In addition, you represent that "X" will obtain the written consent of "A" to be treated as a QEP and that "A" will have access to all books and records pertinent to an investment in the Pool.

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 "A" as a QEP and continue to claim relief pursuant to Rule 4.7(a), notwithstanding "A's" investment in the Pool.

The exemption granted by this letter does 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 of Commission regulations, 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 relief is applicable to "X" solely in connection with its operation of the Pool.

This letter, and the exemption granted herein, are based upon the representations that have been 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 that the operations or activities of "X" or the Pool, including the composition of its participants, 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 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 only be sold to QEPs.

The other owner of the account is "B". By letter dated August 28, 1997, the Division granted "X" exemptive relief from Rule 4.7(a) so that it could treat this joint account as if it satisfied the QEP criteria of the rule and accept its investment for participation in the Pool.

7 U.S.C. § 1 *et seq.* (1994).