

CFTC Letter No. 98-55**June 22, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemptive Relief to Treat Certain Participants in a Fund as Qualified Eligible Participants ("QEPs") and Request for Confirmation that the Fund is a QEP under Rule 4.7(a)(1)(ii)(D)

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 your facsimile transmissions dated March 4, 1998 and March 26, 1998 and by telephone conversations with Division staff. By your correspondence, you request relief on behalf of the "General Partner", a registered commodity pool operator ("CPO") and the CPO of the "Fund" so that it may treat two of its employees as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹ In addition, you request confirmation of your view that the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation") should not be applicable to the Fund, and that the General Partner may treat the Fund 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 Fund is being operated pursuant to the criteria of Rule 4.7(a). Accordingly, interests in the Fund are only offered to QEPs.² The General Partner seeks relief to permit it to accept investments from the following two non-QEP employees (the "Proposed Non-QEP Participants"):

(1) "A", who has been employed by the General Partner as a Trader since March 1994. In this capacity, "A" currently manages a portfolio of United States ("U.S.") equities of approximately \$140 million on behalf of the General Partner. From June 1988 through March 1994, "A" was employed by "P" in various departments. Initially, he worked as a Junior Financial Analyst in the Management Reporting Group, then became a Financial Analyst in the International Group and most recently was a Trader in the Equity Group. "A" received a B.S. in Information Systems and Economics from "Q" in June 1988. He is an accredited investor under Regulation D of the Securities Act of 1933 ("Regulation D").

(2) "B", who has been employed by the General Partner as a Trader since June 1991. In this capacity, "B" has developed and uses dollar-neutral strategies involving quantitative models, fundamental valuation models and security analysis in connection with managing a portfolio of approximately \$30 million on behalf of the General Partner. From November 1987 through May 1991, "B" was employed by "R" as a Vice President and Portfolio Manager and developed and managed

value-oriented quantitative investment products. From August 1980 through October 1987, "B" was employed by "S" in the Investment Technology Group where he served variously as a Vice President, Manager, and programmer and was responsible for the software development and hardware operation supporting the firm's business. "B" received his B.S. and M.S., both in Operations Research, in 1978 and 1981, respectively, from "T". In 1987, "B" received an M.B.A. (with a concentration in Finance) from "U". He is an accredited investor under Regulation D.

In support of your request, you represent that the General Partner will obtain the written consent of each Proposed Non-QEP Participant to be treated as a QEP and further, that each Proposed Non-QEP Participant has access to the books and records relating to an investment in the Fund.

In addition, the General Partner wishes to invest more than ten percent of the Fund's assets in other pools for which the CPOs thereof have claimed relief pursuant to Rule 4.7(a). 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 the General Partner to treat the Proposed Non-QEP Participants as if they satisfy the QEP criteria for purposes of investing in the Fund, then the General Partner should also be permitted to treat them as QEPs under Rule 4.7(a)(1)(ii)(D). Since the Fund'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 representations you have made, it appears that granting the requested relief with regard to the Proposed Non-QEP Participants 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 the General Partner an exemption such that it may treat the Proposed Non-QEP Participants as QEPs and continue to claim relief pursuant to Rule 4.7(a), notwithstanding the Proposed Non-QEP Participants' investment in the Fund. Further, based upon this determination and the reasoning set forth above, the Division grants the General Partner an exemption such that it may treat the Proposed Non-QEP Participants as QEPs for purposes of qualifying the Fund itself as a QEP under Rule 4.7(a)(1)(ii)(D).

The relief granted by this letter does not excuse the General Partner from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act")³ or in the Commission's regulations issued thereunder. For example, the General Partner 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 provisions of Part 4. Moreover, this relief is applicable to the General Partner solely in connection with its operation of the Fund, as discussed above.

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 the exemptions void. You must notify us immediately in the event that the operations or activities of the General Partner or the Fund, including the composition of the investors in the Fund, 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 no-action relief, we have treated it as a request for exemptive relief. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

² The General Partner filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Fund on _____.

³ 7 U.S.C. § 1 *et seq.* (1994).