

**CFTC Letter No. 98-65****August 24, 1998****Division of Trading & Markets**

Re: Rule 4.7(a); Request to Treat Certain Investors as Qualified Eligible Participants

Dear :

This is in response to your letter dated March 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 30, 1998 and April 6, 1998 and telephone conversations with Division staff. By your correspondence, you request exemptive relief on behalf of "H" and "I" (collectively, the "General Partners"), both registered commodity pool operators ("CPOs"), and the general partner and CPO, respectively, of "J" and "K" (the "LPs"), so that they may treat two persons who are their employees as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>1</sup>

Based upon the representations made in your correspondence, we understand the facts to be as follows. Each LP is operated pursuant to Rule 4.7(a).<sup>2</sup> The General Partners propose to admit two persons employed by each of them who are not QEPs (the "Proposed Non-QEP Participants") in one or more of the LPs or in other funds operated by the General Partners (the LPs and such other funds are collectively referred to hereafter as "Funds") or other entities similarly formed to operate other funds by the principals of the General Partners. Specifically, the Proposed Non-QEP Participants are:

(1) "A", a registered associated person ("AP") , principal and Chief Executive officer ("CEO") of "H", "I", and "L" (each a "Registrant") since the formation of each firm in October 1997, February 1998, and July 1997, respectively.<sup>3</sup> As CEO of each Registrant, he oversees all business aspects of the firms, including finance, staffing, compensation, benefits, legal, compliance and tax issues. He is also the head securities trader for each firm. From 1995 through 1997, "A" served as Vice President at "M" in London where he engaged in sales of European equities, block trading of equities, and supervised initial public offerings and privatizations. From 1994 to 1995, he was a Director at "O" in London where he was head of "N" managing a team of forty-five professionals. From 1992 to 1994, he worked at "P" in London as a Vice President engaged in sales of European and emerging market equities, initial public offerings, privatizations and the formation of Eastern European stockmarkets. "A" graduated with honors from "U" in England in 1988. He is an accredited investor under Regulation D of the Securities Act of 1933 ("Regulation D").

(2) "B", a registered AP, principal, and the Director of Investor Relations for "H" and "L" since January 26, 1998, and for "I" since February 28, 1998. In her position as the Director of Investor Relations, she conducts presentations for prospective investors on the funds managed by "L", handles all client communications for each Registrant and assists "A" in administering the business aspects of each firm. From 1996 to 1997, she was a registered AP and a Managing Director and head of Investor Relations at "Q", where she directed and implemented all aspects of internal and external investor relations and new business strategies. From 1990 to 1996, "B" was a Senior Vice President and Director of Marketing and Sales for "R", an investment advisory subsidiary of "S". "B" is a 1974 graduate of "T". She is an accredited investor under Regulation D.

In support of your request, you represent that the General Partners 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 will have access to the books and records pertinent to an investment in a Fund.

Based upon the foregoing, 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 each 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 LPs. In addition, by the authority delegated to it under Rule 140.93(a)(1), the General Partners may treat a Proposed Non-QEP Participant as a QEP for the purpose of investing in any other Fund which they operate currently and continue to operate in the future. This exemption is, however, subject to the condition that at the time a Proposed Non-QEP Participant seeks to invest in another Fund, he or she must be employed by the General Partner operating the Fund in a position that is the same or substantially the same as that which he or she currently holds.<sup>4</sup>

The Division is declining to grant your request for exemptive relief for "other entities similarly formed to operate other funds by the principals of the General Partners." Inasmuch as these entities have yet to be formed, the Proposed Non-QEP Participants' positions and levels of responsibility, upon which we based in part the foregoing exemption from the QEP criteria of Rule 4.7 for the General Partners, are not and cannot be known at this time.

This letter does not excuse either General Partner from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")<sup>5</sup> or the Commission's regulations issued thereunder. For example, each 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 applicable provisions of Part 4. Further, this relief is applicable to "H" and "I" solely in connection with the operation of a Fund.

This letter, and the exemption granted herein, are based upon the representations that have been made to us and is subject to compliance with the condition set forth above. 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 a General Partner or a Fund, 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 Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly  
yours,

I. Michael  
Greenberger

Director

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

<sup>2</sup> "H" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to "J" effective December 30, 1997. "I" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to "K" effective March 30, 1998. Thus, interests in each LP may only be sold to QEPs.

<sup>3</sup> "L", a registered CPO and CTA, is wholly owned by "A" and "C", who serves as the President of each Registrant.

<sup>4</sup> If an employee has been promoted to a position of greater responsibility, he or she may continue to be treated as a QEP for purposes of investing in other Funds.

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