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**CFTC Letter No. 98-74****October 22, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemptive Relief to Treat a Trust as a Qualified Eligible Participant

Dear :

This is in response to your letter dated August 6, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), whereby 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).<sup>1</sup> 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 letter, we understand the facts to be as follows. The Pool is operated pursuant to the criteria of Rule 4.7(a).<sup>2</sup> "X" now wishes to admit as a participant in (the "Trust" or "Non-QEP").<sup>3</sup>

In support of your request you make the following representations:

The Trust was created under the will of "A", the grandmother of "B". "B" is the Chairman of the Board and a co-founder and a principal of "X". "B" is a QEP and direct investor in the Pool. "B", the sole trustee of the Trust, has appointed "X" as the investment advisor to the Trust, and has agreed that the Trust may be treated as a QEP in the Pool. . . . The Trust is one of the investment and estate planning vehicles of "C". The sole beneficiary of the Trust is "B".

In his capacity as Chairman of the Board of "X", "B" is involved on a day-to-day basis in the investment activities and financial operations of "X", participates in long-term strategic planning and is actively involved in managing and advising "X's" clients, including the Pool. "B" has full access to all trading and financial information related to the operation of 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). You request that if the Division permits "X" to treat the Non-QEP as if it satisfies the QEP criteria for purposes of investing in the Pool, then the Division also should permit "X" to treat the Non-QEP as a QEP under Rule 4.7(a)(1)(ii)(D).<sup>4</sup>

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 Non-QEP as a QEP and continue to claim relief pursuant to Rule 4.7(a) notwithstanding the Non-QEP's investment in the Pool. Further, based upon this determination, the Division grants "X" an exemption such that it may treat the Non-QEP 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")<sup>5</sup> or the Commission's regulations issued thereunder. For example, "X" remains subject to all antifraud provisions of the Act and the Commission's 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 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 Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> 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).

<sup>2</sup> "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Pool effective

June 30, 1997. Thus, interests in the Pool may only be sold to QEPs.

<sup>3</sup> The trust does not qualify as a QEP because it does not have assets in excess of \$5 million. *See* Rule 4.7(a)(1)(ii)(B)(2)(xi).

<sup>4</sup> 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]."

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