

CFTC Letter No. 98-77**November 12, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request to Treat Certain Trusts as Qualified Eligible Participants

Dear :

This is in response to your letter dated June 5, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated June 25, 1998 and telephone conversations with Division staff. By your correspondence, you request on behalf of "W", a registered commodity pool operator ("CPO"), that the Division permit "W", in connection with its operation of "X", "Y" and "Z" (collectively the "Pools"), to treat several trusts as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹ In addition, you request relief from the restriction in Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Restriction"), which would prevent the trusts from investing more than ten percent of their assets in any Pool.

Based upon the representations made in your correspondence, we understand the facts to be as follows. "W" serves as the CPO of the Pools. The Pools are being operated pursuant to the criteria of Rule 4.7(a).² Accordingly, interests in the Pools may be offered only to QEPs. "W" now seeks an exemption to permit it to accept investments from several trusts that do not meet the QEP criteria of Rule 4.7(a)(1)(ii)(B)(2)(xi) because they have less than \$5 million in total assets. In support of your request you represent, among other things, that the grantors and trustees of the trusts are QEPs.

Based on the facts as presented to us, the Division is unable to grant the requested exemption. If you have any questions concerning this correspondence, please contact Charles T. O'Brien, an attorney on my staff, at (202) 418-5450.

Sincerely,

I. Michael
Greenberger

Director

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1998).

² "W" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to "X" on November 3, 1997, "Y" on October 17, 1994 and "Z" on August 17, 1994.