

**CFTC Letter No. 98-78****October 23, 1998****Division of Trading & Markets****Re: Rule 4.7(a); Request for an Exemption to Treat a Prospective Investor as a Qualified Eligible Participant and for Exemptive Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools**

Dear :

This is in response to your letter dated August 7, 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 an exemption on behalf of "X", a registered commodity pool operator<sup>1</sup> and the manager of (the "Fund"), so that a prospective investor in the Fund may be treated as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>2</sup> You also seek relief from the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) in connection with "X's" operation of the Fund.

Based upon your representations, we understand the facts to be as follows. The Fund was organized in May 1998 as a Delaware limited liability company and began trading in June 1998. It is operated pursuant to the criteria of Rule 4.7(a).<sup>3</sup> Accordingly, interests in the Fund may be sold only to QEPs. The Fund would like to admit "A", who has been a senior portfolio manager for "X" since February 1997 and a registered associated person of "X" since October 1997. As senior portfolio manager, "X" is responsible for designing and managing the "V" Program, the investment program of the Fund. He selects the advisers for the Fund, monitors the performance of such advisers, and allocates assets among them.

"A" has more than ten years of experience in the financial services industry, including three years as a vice president and portfolio manager for "Y", the futures group within "U", and five years with "Z", a registered investment adviser. At "Z", "A" was involved primarily in research, portfolio management and the trading of stock bond and derivative portfolios for U.S. institutions. He has a B.A. degree in economics and is an AIMR chartered financial analyst. Last year, "A" earned in excess of \$110,000. This year, he expects to earn in excess of \$150,000. He has a net worth of approximately \$360,000 and has a personal investment portfolio with a market value of approximately \$200,000 invested in publicly traded U.S. common stocks and bonds.

In support of your request, you represent that "A" has consented in writing to be treated as

a QEP for the purposes of Rule 4.7(a). You further represent that by virtue of his role and responsibilities for the Fund, "A" has direct access to all information pertinent to an investment in the Fund.

Based upon the foregoing, it appears that granting your request would not be contrary to the public interest or 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 his investment in the Fund. "X" is further permitted, notwithstanding "A's" investment, to invest more than ten percent of the fair market value of the Fund's assets in Rule 4.7(a) exempt pools.

This letter does not excuse "X" from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations thereunder. For example, "X" remains subject to all antifraud provisions of the Act and the Commission's regulations, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations, and all other provisions of Part 4. Moreover, this letter is applicable to "X" solely in connection with its operation of the Fund, as discussed above.

This letter, and the exemption granted herein, are based upon the representations you have made to us and are subject to compliance with the condition stated above. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event the operations or activities of "X" 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 Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael  
Greenberger

Director

<sup>1</sup> "X" also is registered as a commodity trading advisor ("CTA").

<sup>2</sup> Although your letter sought a "no-action" position with respect to compliance with Rule 4.7(a), we are treating it as a request for exemption from compliance with Rule 4.7(a). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1998).

<sup>3</sup> You represent that you filed a Notice of Claim of Exemption with the National Futures Association and the Division in accordance with Rule 4.7(a) on May 8, 1998.