

CFTC Letter No. 98-82**December 14, 1998****Division of Trading & Markets****Re: Rule 4.7(a); Request to Treat Certain Employees as Qualified Eligible Participants**

Dear :

This is in response to your letter dated November 12, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Commission ("Commission"), as supplemented by telephone conversations with Division staff, whereby you request that "J", a registered commodity pool operator ("CPO"), be permitted to treat certain employees as "qualified eligible participants" ("QEPs") under Rule 4.7 for the purpose of the investing in "K" and "L", Rule 4.7 exempt pools (the "Funds") that "J" operates,¹ and "M", a commodity pool to be formed and operated by "J" pursuant to Rule 4.7 (collectively, the "Funds"). This relief is necessary so that "J" may claim relief under Rule 4.7 with respect to the Funds in the event the employees invest in the Funds.

Based upon the representations made in your correspondence, we understand the facts to be as follows. All of the employees for which "J" seeks relief (the "Non-QEPs") are accredited investors under Regulation D of the Securities Act of 1933 and they satisfy the financial tests for natural persons in Rule 4.7(a)(1)(ii)(B)(2).² However, none of the Non-QEPs meets the portfolio test in Rule 4.7(a)(1)(ii)(B)(1). Specifically, the Non-QEPs are:

"A", who is a managing director of "J" responsible for portfolio management. He has performed that function at "J" since January 1990. For five years prior to that, "A" conducted fixed income research at "N". He has a bachelor's degree from "O" and a master's degree in Business Administration from "P".

"B", who is a managing director and chief financial officer of "J" responsible for all financial and treasury operations. From 1991 until recently, he was a senior vice president at "Q" responsible for mergers and acquisitions and, prior to that, was a corporate finance manager at "R". He has a bachelor's degree in Accounting and Economics from "S".

"C", who, since June of this year, is Director/Portfolio Management Group of "J" with oversight and trading responsibilities with respect to high-yield investments and related risk management. Prior to that, he served from July 1993 as vice president of high-yield portfolio management with "T" and head of high-yield and investment-grade trading. During the first half of 1993, "C" was assistant vice president at "U", where he had trading responsibilities for all equities, and from June 1990 until the "U" assignment, he conducted securities research at "T" for convertible and investment grade bond trading. He has a bachelor's degree from "V".

"D", who is a managing director as well as general counsel of "J". Prior to his current appointment he served as general counsel to "W", a registered investment adviser ("IA"), and of "X", an IA, CPO and commodity trading advisor. He has a bachelor's degree from "Y" and a law degree from "Z".

"E", who is a managing director of "J" in its account management group - alternative investments and international clients, where he engages in product development and client services for

international clients, among other duties. He has been employed at "J" since 1991. Prior to that time, he was an investment banking analyst at "AA". "E" has a bachelor's degree from "BB".

"F", who is a managing director of "J" in the account management group with responsibility for marketing and client services. From 1987 until 1995 when "F" joined "J", he was responsible for international equity marketing and client services as "CC". From 1981 to 1987, he was in the finance and pension asset management group at "DD" and, from 1977 to 1981, in the finance section of "EE". He has a bachelor's degree in Accounting and Economics from "FF" and a master's degree in finance from that "FF's" graduate school of business.

"G", who is director of "GG" responsible for managing "J's" open- and closed-end high yield funds and for sourcing, evaluating and managing bank loan investments. From 1983 to 1998, he was employed at "HH" where his final position was as vice president in charge of "II". He has a bachelor's degree in Economics from "JJ".

"H", who is a managing director of "J" responsible for financial modeling and client-related trading. He joined "J" in 1994 after being employed at "KK" from 1988. He has a bachelor's and master's degree from "LL" and a master of philosophy degree in finance and quantitative methods from "MM".

In support of your request you represent that each Non-QEP will consent in writing to being treated as a QEP prior to investing in a Fund and will have access to all books and records relevant to an investment in the Fund in which he or she seeks to participate.

Based upon the foregoing representations, we believe that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(a). Accordingly, under the authority delegated to it by Rule 140.93(a) (1), the Division hereby grants "J" an exemption such that it may treat the Non-QEPs as QEPs for the purpose of investing in the Funds and may claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding investment by the Non-QEPs in the Funds.

The relief granted by this letter does not excuse "J" from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations thereunder. For example, "J" 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 relief is applicable to "J" solely in connection with its operation of the Funds.

This letter, and the exemption granted herein, are based upon the representations you have made to us. 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 "J" or the Funds change in any material way from those 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

¹ Records of the National Futures Association indicate that "J" filed a Notice of Claim for Exemption under Rule 4.7 for these pools on July 18, 1997 and July 16, 1997, respectively.

² Rule 4.7(a)(1)(ii)(B)(2) provides that a QEP is:

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase in the exempt pool exceeds \$1,000,000; [or]

(x) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.