

CFTC Letter No. 98-83**December 14, 1998****Division of Trading & Markets**

Re: Request for Extension of Position under Rule 4.7.

Dear :

This is in response to your letter dated July 10, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmissions dated September 17, 1998, October 30, 1998 and December 1, 1998 and telephone conversations with Division staff, by which you request an extension of the position under Rule 4.7¹ that the Division previously had taken with respect to "X", a registered commodity pool operator ("CPO"), in connection with its operation of the Fund.

Based upon the representations you made in your correspondence, we understand the facts to be as follows. The Fund has two classes of shares: Class A, which consists of persons who are not "qualified eligible participants" ("QEPs"), as that term is defined in Rule 4.7, and Class B, which consists solely of persons who are QEPs. Currently, there are 171 participants in the Fund, 16 of whom are Non-QEPs. As a percentage of the Fund's equity, the Non-QEPs represent \$3,867,894 out of \$617,597,931, or 0.6 percent.

By letter dated August 12, 1993, the Division permitted "X" to file a Rule 4.7 claim of exemption with respect to the Class B units of the Fund, subject to compliance with certain conditions - *e.g.*, that the Class A participants would continue to receive the full protections of Part 4 of the Commission's regulations.² By letter dated January 17, 1995 the Division permitted "Y", a registered CPO, to treat the Fund as a QEP for the purpose of the Fund making an investment in "Z", a Rule 4.7 exempt pool it operated, notwithstanding that "X" had filed a Rule 4.7 claim of exemption solely with respect to the Class B shares of the Fund. The Division based its action upon, among others, representations that "X" would continue to comply with the conditions set forth in the Division's August 12, 1993 letter and that "X" would not accept any new Class A participants in the Fund.

As you note, under Rule 4.7(a)(1)(ii)(B)(2)(xi) any pool with total assets in excess of \$5,000,000, among other criteria, is a QEP. However, unless every participant in the pool also is a QEP, the pool is limited to investing no more than 10 percent of the fair market value of its assets in Rule 4.7 exempt pools (the "10 Percent Restriction"). As you also

note, while the Fund is a QEP under Rule 4.7(a)(1)(ii)(B)(2)(xi), because of the presence of the Non-QEP, Class A shareholders in the Fund, the Fund is subject to the 10 Percent Restriction.

"X" now seeks to have the Fund participate in Rule 4.7 exempt pools in addition to "Z". In this regard, "X" requests that where it is the CPO of the Rule 4.7 exempt investee pool, it need not comply with, nor count an investment in that pool by the Fund towards, the 10 Percent Restriction. For all other Rule 4.7 exempt investee pools -- *i.e.*, those of which "X" is not the CPO -- "X" would continue to adhere to the 10 Percent Restriction. In support of the request, you represent that "X" will comply with the conditions set forth in the August 12, 1993 and January 17, 1995 letters - *e.g.*, that the Class A Participants will continue to receive the full protections of Part 4. We further note that: (1) as the CPO of both the Fund and the Rule 4.7 exempt investee pools for which "X" seeks an exemption from the 10 Percent Restriction, "X" has all of the information necessary for it to provide the Class A participants with the full protections of Part 4; and (2) "X" will comply with the 10 Percent Restriction with respect to all other Rule 4.7 exempt pools in which the Fund invests and of which "X" is not the CPO.

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. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts "X" from the 10 Percent Restriction of Rule 4.7(a)(1)(ii)(B)(2)(xi) with respect to investment by the Fund in any Rule 4.7 exempt pools operated by "X".

This letter, and the exemption provided 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 that the operations of "X" or the Fund change in any material way from those represented to us. Further, this letter is applicable to "X" solely in connection with its operation of the Fund.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act, as amended (the "Act"),³ or in the Commission's regulations issued thereunder. For example, it remains subject to all antifraud provisions of the Act, the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and all other applicable provisions of Part 4.

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

² Rules 4.21, 4.22 and 4.23 respectively set forth the disclosure, reporting and recordkeeping requirements applicable to registered CPOs. Rule 4.7 provides relief from certain of these requirements for CPOs who operate commodity pools that solely have QEPs. Because the Fund has Non-QEPs for Class A shareholders, "X" could not file a Rule 4.7 claim for the Fund as a whole. Accordingly, the Division permitted "X" to file a Rule 4.7 claim with respect to the Class B shares, which solely are held by QEPs.

³ 7 U.S.C. §1 *et seq.* (1994).