

CFTC Letter No. 99-03**December 23, 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 24, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Commission ("Commission"), as supplemented by your facsimile transmission dated December 7, 1998, whereby you request that "E", 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 their investing in the "Fund", a Rule 4.7 exempt pool that "E" operates.¹ This relief is necessary so that "E" may continue to claim relief under Rule 4.7 with respect to the Fund in the event these employees invest in the Fund.

Based upon the representations made in your correspondence, we understand the facts to be as follows. All of the employees for which "E" 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 Senior Vice President at "E". "A" joined "E" in 1985 and focuses on the analysis and trading of investment-grade corporate bonds and oversees all fixed income trading. "A" earned a B.S. in finance from the State University of "F" in 1984 and an M.B.A. in Finance from "G" in 1989.

"B", who is a Managing Director at "E" and is head of the global emerging markets and chief investment officer for "H" equities. Prior to joining "E" in 1995, he was head of emerging markets investments and research at "I" in London from 1992 to 1995; a Director of "J" London; and a portfolio manager with "K", a public pension plan sponsored in Scotland. "B" earned a Diploma in Management Studies from "N" in 1983 and an M.A. in Politics and Modern History from the University of "O" in 1980.

"C", who is a Managing Director at "E". "C" manages the Japanese portion of "E's" international equity portfolios. He joined "E" in 1984 and also worked as a portfolio manager at "P" from 1989 to 1991. "C" has published

articles in *Financial Analysts Journal* and *Journal of Portfolio Management*. "C" earned a B.A. in Government from "Q" in 1981 and an M.S. in Finance from "R" in 1984.

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.

Based upon the representations made in your correspondence, 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 "E" an exemption from the QEP criteria of Rule 4.7(a) such that it may treat the Non-QEPs as QEPs for the purpose of investing in the Fund and may continue to claim relief pursuant to Rule 4.7(a) with respect to the Funds, notwithstanding investment by the Non-QEPs in the Fund.

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

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 "E" or the Fund 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 "E" filed a Notice of Claim for Exemption under Rule 4.7 with respect to the Fund effective November 20, 1998.

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.