

**CFTC Letter No. 99-59****August 11, 1999****Exemption****Division of Trading & Markets**Re: Request to Treat an LLC as a Qualified Eligible Client

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Dear :

This is in response to your letter dated January 26, 1999 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 that "X", a registered commodity trading advisor ("CTA"), be permitted to treat "Y" as a qualified eligible client ("QEC") for purposes of Rule 4.7(b).<sup>1</sup>

Based upon the representations made in your correspondence, we understand the facts to be as follows. "A" established "Y" solely for estate planning purposes, and "Y" wishes to be a client of "X". However, as you note in your letter, "Y" does not come within the definition of a QEC because it does not meet the \$5 million total asset criterion of Rule 4.7(b)(1)(ii)(B)(2)(viii).

In support of your request to treat "Y" as a QEC, you explain that: (1) "A", who is a member of "Y" and a QEC, is responsible for all investment decisions for "Y", and he will have access to all information pertinent to "Y's" trading account; (2) "A", as a listed principal, registered associated person, chief trader and sole shareholder of "Z", a registered CPO and CTA, has nearly 20 years of experience managing commodity interest trading accounts; (3) "A" is the only person who has contributed capital to "Y"; (4) the "Trust", which is not itself a QEC because it does not meet the \$5 million total asset criterion of Rule 4.7(b)(1)(ii)(B)(2)(vii), is the only other member of "Y"; and (5) "A" has agreed that "Y" may be treated as a QEC. Additionally, you explain that "A" established the Trust along with "Y" for estate planning purposes. Upon "A's" death, under the terms of the Trust, "Y's" assets will revert to the Trust.<sup>2</sup>

You effectively are requesting that the Division look to "A" in making a determination as to whether "X" should be permitted to treat "Y" as a QEC. As noted above, "Y" does not meet the applicable QEC criteria. As also noted above, however, "A", "Y's" sole source of funding and the person responsible for "Y's" investment decisions, is a QEC.

Based upon the representations made in your correspondence, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(b). Accordingly, under the authority delegated to it by Rule 140.93(a)(1), the Division hereby grants “X” an exemption such that it may treat “Y” as a QEC and claim relief pursuant to Rule 4.7(b), notwithstanding having “Y” as a client.

This letter does not excuse “X” from compliance with any other applicable requirements contained in the Commodity Exchange Act (the “Act”)<sup>3</sup> or in the Commission’s regulations issued thereunder. For example, “X” remains subject to all antifraud provisions of the Act and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations and to all other provisions of Part 4. Moreover, this exemption is applicable to “X” solely in connection with its provision of commodity interest trading advice to “Y”.

This letter, and the exemption granted herein, are based upon the representations that 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 “X’s” operations or activities change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact me or Gregory S. Collett, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> While your letter sought a “no action” position under Rule 4.7(b), we are treating it as a request for exemption from the QEC criteria of Rule 4.7(b). Commission rules referred to herein are found at 17 C.F.R. Ch. I. (1999).

Commission records indicate that “X” filed a Notice of Claim for Exemption pursuant to Rule 4.7(b) with respect to providing commodity interest trading advice to QECs on March 15, 1999.

<sup>2</sup> See generally March 8, 1999 letter from “B”, General Counsel of “Z”.

<sup>3</sup> 7 U.S.C. §1 *et seq.* (1994).