

**CFTC Letter No. 98-35****May 12, 1998****Division of Trading & Markets**

Re: Rule 4.7(a); Request to Treat Certain Investors as Qualified Eligible Participants

Dear :

This is in response to your letter dated October 16, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmissions dated October 30, 1997, November 24, 1997, December 3, 1997, December 11, 1997, and April 22, 1998 and telephone conversations with Division staff. By your correspondence, you request relief on behalf of the "General Partner", a registered commodity pool operator ("CPO"),<sup>1</sup> so that it may treat certain participants in the "Partnership" as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).<sup>2</sup>

Based upon your representations, we understand the facts to be as follows. The General Partner operates the Partnership pursuant to Rule 4.7(a).<sup>3</sup> It proposes to admit as participants in the Partnership three persons who are not QEPs (the "Non-QEPs"). Each Non-QEP: (1) qualifies as an accredited investor under Regulation D of the Securities Act of 1933; (2) has substantial experience in the financial services industry; and (3) is employed by either the General Partner or its affiliate, "X".<sup>4</sup> Through their employment, the Non-QEPs will have access to the books and records pertinent to an investment in the Partnership. Further, the General Partner has obtained the written consent of each Non-QEP to be treated as a QEP. The Non-QEPs are:

(1) "A", a member of the General Partner since April 1997.<sup>5</sup> "A" oversees all day-to-day operations of the General Partner, ranging from employee-related matters to its investment activities. He has over ten years of experience as a quantitative analyst, trader and portfolio manager. Prior to becoming a member of the General Partner, he served as Vice President and Senior Portfolio Manager of "Y", a registered investment adviser, from December 1991 through April 1997.

(2) "B", a Senior Vice President of "X" since September 1996. "B" is involved in the analysis and execution of private equity transactions. From October 1993 to September 1996, "B", an attorney licensed to practice law, was an associate at a Chicago law firm, specializing in mergers and acquisitions as well as general corporate law.

(3) "C", the Executive Vice President and General Counsel of "X" since January 1992. From April 1985 through January 1992, "C" was an associate in the

corporate department, and later a partner, with a Chicago law firm.

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest and the purposes of Rule 4.7(a). Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby grants the General Partner an exemption such that it may treat the Non-QEPs as QEPs and continue to claim relief pursuant to Rule 4.7(a), notwithstanding investment by the Non-QEPs in the Partnership.

The relief granted by this letter does not excuse the General Partner from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")<sup>6</sup> or the Commission's regulations issued thereunder. For example, the General Partner remains subject to all antifraud provisions of the Act and of Commission regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4. Further, this relief is applicable to the General Partner solely in connection with the operation of the Partnership, as discussed above.

This letter, and the exemption granted herein, are based upon the representations that have been made to us. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event that the operations or activities of the General Partner or the Partnership, including the composition of its participants, change in any material way from those as represented to us.

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

Very truly  
yours,

I. Michael  
Greenberger

Director

<sup>1</sup> The General Partner also is registered as a commodity trading advisor.

<sup>2</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

<sup>3</sup> The General Partner filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Partnership, effective \_\_\_\_\_. Thus, interests in the Partnership may only be sold to QEPs.

<sup>4</sup> "X" is a private investment firm which specializes in the sale of privately owned businesses, as well as corporate divestitures, recapitalizations, turnarounds and restructurings. It is not registered with the Commission in any capacity. "X" is affiliated with the General Partner in that at least fifty percent of the interest in each firm is collectively owned by "D" and "E".

<sup>5</sup> "A" has a 20% equity interest in the General Partner, which is organized as a limited liability company.

<sup>6</sup> 7 U.S.C. § 1 *et seq.* (1994).