

CFTC Letter No. 98-40**June 16, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemptive Relief to Treat Employee of Commodity Pool Operator as Qualified Eligible Participant.

Dear :

This is in response to your letter dated March 9, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your correspondence dated May 15, 1998 and telephone conversations with Division staff, wherein you request exemptive relief on behalf of "X", a registered commodity pool operator ("CPO") and the general partner of the "Fund", to permit an employee of the Fund to be treated as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a)¹ in connection with its operation of the Fund.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Fund was established prior to the adoption of Rule 4.7.² On March 14, 1994, "X" filed a Notice of Claim for Exemption under Rule 4.7 with respect to its operation of the Fund.³ By letter dated March 25, 1994, the Division granted "X" relief from Rule 4.7(a)(1)(ii)(B)(2)(xi) ("the Ten Percent Limitation") to permit it to invest more than ten percent of the Fund's assets in Rule 4.7 pools, notwithstanding the participation of specified non-QEP investors in the Fund. The relief from the Ten Percent Limitation was granted subject to certain conditions, including the requirement that no additional non-QEPs be admitted as participants in the Fund. "X" now seeks relief to permit it to continue to claim relief from: (1) certain disclosure requirements pursuant to Rule 4.7(a)(2)(i); and (2) the Ten Percent Limitation, despite the participation of an additional non-QEP in the Fund.

The proposed non-QEP participant is "A". "A" has been employed by "X" as an Associate Portfolio Manager since December 1, 1996 and has been registered as an associated person of "X" since April 21, 1998. "A" has no other employment or professional experience in the financial services industry.⁴ "A's" current annual income is \$77,000, excluding bonus.⁵ He and his spouse have a combined personal investment portfolio of \$65,000 and a combined net worth of \$55,000.

In light of the facts that "A": (1) has been employed by "X" for less than two years; (2) has no other financial services employment or professional experience; and (3) substantially

lacks the financial resources required of a QEP under Rule 4.7(a), the Division is declining at this time to permit "X" to treat "A" as a QEP for the purpose of investing in the Fund.

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

Very truly yours,

I. Michael Greenberger

Director

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch.1 (1997).

² Rule 4.7 became effective on September 8, 1992.

³ The Notice of Claim for Exemption was filed pursuant to Commission Advisory 2-93 which permits CPOs to claim relief under Rule 4.7 from Rules 4.21 and 4.22 for previously offered pools in which some participants are not QEPs.

⁴ The only other employment information you have provided for "A" is that from 1991 to 1994, "A" was employed as an assistant account manager for "Y", where he handled commercial liability insurance claims.

⁵ "A" is expected to receive an annual bonus of \$13,000 for this year.