

CFTC Letter No. 98-47**July 22, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request to Treat Certain Persons as Qualified Eligible Participants

Dear :

This is in response to your letter dated May 27, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile dated June 21, 1998 and by telephone conversations with Division staff. By your correspondence, you request an exemption on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), so that, in connection with its operation of the "Pool", it may treat the parents of the managing member of "X" as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" is a New York limited liability company solely owned by "A". "A" is a QEP and the sole owner, managing member, principal and registered associated person ("AP") of "X". "X" operates the Pool pursuant to the criteria of Rule 4.7(a).² "X" now seeks relief to allow it to accept an investment from the parents of "A", "B" and "C", neither of whom qualify as QEPs.

In support of your request, you represent that "B" and "C" qualify as accredited investors under Regulation D of the Securities Act of 1933 and have a joint net worth in excess of \$1 million and at least \$500,000 jointly invested in securities. In addition, you represent that "B" and "C" consent to being treated as QEPs and further, that they have access to all of the books and records relating to an investment in the Pool.

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest or the purposes of Rule 4.7(a). Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby grants "X" an exemption such that it may continue to claim relief pursuant to Rule 4.7(a), notwithstanding investment by "B" and "C" in the Pool, and to treat them as QEPs.³

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

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 "X" or the Pool, including the composition of the investors in the Pool, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Charles O'Brien, an attorney on my staff, at (202) 418-5450.

Sincerely,

I. Michael
Greenberger

Director

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

² On May 28, 1998, "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to its operation of the Pool.

³ *Cf.* CFTC Interpretative Letter No. 98-34, 1998 WL 292831 (C.F.T.C.) (May 22, 1998), in which the Division denied a request for Rule 4.7(a) exemptive relief to treat the parents of several of the CPO's employees as QEPs because: (1) the employees themselves were not QEPs; and (2) while they occupied senior positions within the CPO, the employees did not own controlling interests in the CPO. In the instant case, the person whose parents "X" may treat as QEPs ("A") is a QEP and the sole owner, managing member, principal and registered AP of "X".

⁴ 7 U.S.C. § 1 *et seq.* (1994).