

CFTC Letter No. 98-53**June 22, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemptive Relief to Treat Certain Participants in a Fund as Qualified Eligible Participants ("QEPs") and Confirmation that the Fund is a QEP under Rule 4.7(a)(1)(ii)(D)

Dear :

This is in response to your letter dated January 21, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated February 19, 1998, March 4, 1998, March 11, 1998, March 19, 1998 and telephone conversations with Division staff. By your correspondence, you request relief on behalf of "P", a registered commodity pool operator ("CPO") and the CPO of the "Fund", so that it may treat three of its employees as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹ In addition, you request confirmation of your view that the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation") should not be applicable to the Fund, and that "P" may treat the Fund as if it satisfies the QEP criteria of Rule 4.7(a)(1)(ii)(D).

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Fund is being operated pursuant to the criteria of Rule 4.7(a). Accordingly, interests in the Fund are offered solely to QEPs.² "P" seeks relief to permit it to accept investments from the following non-QEP employees (the "Proposed Non-QEP Participants"):

(1) A, a registered associated person ("AP") and listed principal of "P" who has been employed by the firm since March 3, 1998 as a trading strategist and risk manager for Research/System Development, Global Risk Management, Global Trade Strategy and Global Trading. "A" previously was employed by "U" from July 1990 to January 1997 where, among other things, he traded United States ("U.S.") government securities for the firm's proprietary account, implemented trading strategies in U.S. government bonds, swaps, options, treasury, eurodollar and municipal bonds, and developed models of mortgage backed securities for use by the firm's proprietary trading group. "A" earned a B.A. from "QQ" in 1988 with a double major in physics and mathematics and a M.A. in physics in 1990. He is an accredited investor under Regulation D of the Securities Act of 1933 ("Regulation D").

(2) "B", a registered AP of "P" who has been employed by the firm since March 3, 1998 as a trader and supervisor of trade execution. "B" previously was employed by "U" from April 1990 through January 1997, where he served most recently as

Vice President and Trader in the U.S. government bond and fixed-income derivatives trading units. "B" received his B.S. in Finance with high honors from "V" in 1989, where he graduated first in his class. He is an accredited investor under Regulation D.

(3) "C", a registered AP of "P" who has been employed by the firm since March 3, 1998 as the Chief Financial Officer. He previously was employed by "W", where he served as a Managing Director from March 1992 to November 1997 and was responsible for accounting, operations and finance for various hedge funds advised or managed by "W". From October 1989 to February 1992, "C" served as Chief Financial Officer of "X", a \$3 billion hedge fund, where he was responsible for all accounting, operations and finance. From September 1988 to September 1989, he worked for "Y" as an Assistant Vice President and was employed by "Z" in the commodity trading audit group from September 1985 to September 1988. "C" earned a B.S.B.A. in Accounting from "PP" in 1985 and is a Certified Public Accountant. He is an accredited investor under Regulation D.

In support of your request, you represent that "P" will obtain the written consent of each Proposed Non-QEP Participant to be treated as a QEP and further, that each Proposed Non-QEP Participant has access to the books and records relating to an investment in the Fund.

In addition, "P" wishes to invest more than ten percent of the Fund's assets in other pools for which the CPOs thereof have claimed relief pursuant to Rule 4.7(a). Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "Ten Percent Limitation") provides that "except where the pool . . . would constitute a qualified eligible participant under paragraph (a)(1)(ii)(D) of [Rule 4.7], no more than 10 percent of the fair market value of the assets of such entity are used to purchase units in exempt pools." Rule 4.7(a)(1)(ii)(D) defines as a QEP "an entity in which all of the unit owners or participants are persons listed in paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of [Rule 4.7]." You assert that if the Division permits "P" to treat the Proposed Non-QEP Participants as if they satisfy the QEP criteria for purposes of investing in the Fund, then "P" should also be permitted to treat them as QEPs under Rule 4.7(a)(1)(ii)(D). Since the Fund's status as a QEP would then be based on Rule 4.7(a)(1)(ii)(D), and not Rule 4.7(a)(1)(ii)(B)(2)(xi), the Ten Percent Limitation would not be implicated.

Based upon the representations you have made, it appears that granting the requested relief with regard to the Proposed Non-QEP Participants 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 "P" an exemption such that it may treat the Proposed Non-QEP Participants as QEPs and continue to claim relief pursuant to Rule 4.7(a) notwithstanding the Proposed Non-QEP Participants' investment in the Fund. Further, based upon this determination and the reasoning set forth above, the Division grants "P" an exemption such that it may treat the Proposed Non-QEP Participants as QEPs for purposes of qualifying the Fund itself as a QEP under Rule 4.7(a)(1)(ii)(D).

The relief granted by this letter does not excuse "P" from compliance with any other applicable

requirements contained in the Commodity Exchange Act (the "Act")³ or in the Commission's regulations issued thereunder. For example, "P" remains subject to all antifraud provisions of the Act- and of Commission regulations, -to the re-ported re-quire-ments for traders set forth in Parts 15, 18 and 19 of the Commis-sion's regulations and to all other provi-sions of Part 4. Moreover, this relief is applicable to "P" solely in connection with its operation of the Fund, as discussed above.

This letter, and the exemptions 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 exemptions void. You must notify us immediately in the event the operations or activities of "P" or the Fund, including the composition of the investors in the Fund, 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

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

² "P" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) for the Fund effective _____.

³ 7 U.S.C. § 1 *et seq.* (1994).