

CFTC Letter No. 98-54**June 24, 1998****Division of Trading & Markets**

Re: Rule 4.7(a) -- Request for Exemptive Relief to Treat Certain Employees of Registered CPO as Qualified Eligible Participants.

Dear :

This is in response to your letter dated January 12, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, wherein you request exemptive relief on behalf of "X", a registered commodity pool operator ("CPO"), to permit two employees of "X" to be treated as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a)¹ in connection with "X's" operation of the "Fund".

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. "X" serves as the general partner and CPO of the Fund. The Fund invests in a variety of financial instruments, including stocks, bonds, currencies, futures and options. Pursuant to a Notice of Exemption filed in accordance with Rule 4.7(a), all investors in the Fund are QEPs.² "X" now seeks relief to permit it to accept investments in the Fund from two employees of "X" who are not QEPs (the "Proposed Non-QEP Participants").³ The Proposed Non-QEP Participants are:

(1) "A." "A" has been employed by "X" and "Y", an affiliated company,⁴ since 1991. "A" currently serves as a senior trader specializing in emerging market countries and option strategies. Prior to joining "X" and "Y", "A" was employed by "Z" where he performed international equity research and engaged in portfolio management. "A" received a B.A. from the University of "T", received the Chartered Financial Analyst designation in 1991 and has passed the Series 3 examination. "A" is registered as an associated person ("AP") of "X" and "Y". "A" is also an accredited investor under Rule 501 of Regulation D⁵ under the Securities Act of 1933, as amended.

(2) "B." "B" has been employed by "X" and "Y" since 1993. "A" specializes in European fixed income and currency trading. Prior to joining "X", "B" had eight years of experience trading derivatives and currency with "U" (in the United States and Japan). "B" earned a B.S. from the State University of

"V" and an M.B.A. from "W" University in 1985. He has passed the Series 3 examination and is registered as an AP of "X" and "Y". He is also an accredited investor under Rule 501 of Regulation D under the Securities Act of 1933, as amended.

In support of your request, you represent that: (1) the Non-QEP Participants, together with "C", are responsible for the overall management of the Fund, including the generation of investment ideas and the establishment of investment policies involving market exposure, research and risk management; (2) "X" will obtain the written consent of each Proposed Non-QEP Participant to be treated as a QEP; and, (3) the Non-QEP Participants are familiar with and will have access to the books and records and all other information pertinent to the Fund.

Based upon the foregoing representations, 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 the participation of the Proposed Non-QEPs in the Fund and to treat the Proposed Non-QEP Participants as QEPs.

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")⁶ or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act,⁷ the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and any otherwise applicable provisions of Part 4. Moreover, this relief is applicable to "X" solely in connection with its operation of the Fund, 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 facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activity of "X" or the Fund, including the composition of the Fund's participants, change in any material way from those represented to us.

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 "X" filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) with respect to the Fund on .

³ Although your letter was styled as a request for a no-action letter, we have treated it as a request for exemptive relief.

⁴ "X" and "Y" share a common principal, "C." "Y" is registered with the Commission as a CPO and as a CTA.

⁵ 17 C.F.R. § 230.501 (1997).

⁶ 7 U.S.C. § 1 et seq. (1994).

⁷ 7 U.S.C. § 60 (1994).