

CFTC Letter No. 98-60**August 4, 1998****Division of Trading & Markets**

Re: Rule 4.7(a); Request for Exemptive Relief to Treat a Prospective Investor as a Qualified Eligible Participant and for Exemptive Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools

Dear :

This is in response to your letter dated March 10, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmission letter dated April 3, 1998 and telephone conversations with Division staff. By your correspondence, you request exemptive relief on behalf of "X", a registered commodity pool operator, so that a partner in the law firm that represents "X" can be treated, for purposes of investment in all existing and future Rule 4.7 exempt domestic pools operated by "X" (the "Rule 4.7 Exempt Pools"), as if he satisfies the qualified eligible participant ("QEP") criteria of Rule 4.7(a).¹ You also seek relief from the ten percent investment limitation of Rule 4.7(a)(1)(ii)(B)(2)(xi) ("Ten Percent Limitation") so as to permit the Rule 4.7 Exempt Pools to invest more than ten percent of their assets in other Rule 4.7 exempt pools in the event the partner invests in the Rule 4.7 Exempt Pools.

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" currently operates numerous Rule 4.7 exempt pools and may operate additional Rule 4.7 exempt pools in the future. Interests in the Rule 4.7 Exempt Pools may be owned solely by QEPs. "X" now seeks to admit "A", an attorney and partner in the law firm of "Y", who does not qualify as a QEP, as a participant in the Rule 4.7 Exempt Pools. "A" is the main partner at "Y" who is responsible for providing legal services to "X" and the commodity pools it operates. He has been intimately involved in the creation of every domestic exempt pool operated by "X" since 1989. By virtue of his long-standing relationship with "X" and his work on behalf of this client, "A" has ready access to all information pertinent to an investment in the Rule 4.7 Exempt Pools.

Though he does not qualify as a QEP, "A" is an accredited investor under Regulation D of the Securities Act of 1933 and, by virtue of his professional activities and personal investments, is knowledgeable and experienced in financial and business matters. He regularly advises and represents clients, including "X", in securities and derivatives-related regulatory and corporate matters, including hedge funds and commodity pools. He has a J.D. degree from "R" and a B.A. degree from "S".

In support of your request for relief, you represent that "A": (1) will consent to being treated as a QEP for purposes of his investment in the Rule 4.7 Exempt Pools; and (2) will consent to a waiver of the Ten Percent Limitation for the purposes of investment of the assets of the Rule 4.7 Exempt Pools in other exempt pools.

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, under authority delegated to it by Rule 140.93(a)(1), the Division hereby grants "X" an exemption such that it may treat "A" as a QEP and may claim relief pursuant to Rule 4.7(a) for each Rule 4.7 Exempt Pool for which it serves as the CPO, notwithstanding the investment of "A". "X" is further permitted, notwithstanding "A's" investment, to invest more than ten percent of the fair market value of the assets of any Rule 4.7 Exempt Pool in other Rule 4.7(a) exempt pools.

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") or in the Commission's regulations thereunder. For example, "X" remains subject to all antifraud provisions of the Act and the Commission's regulations, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations, and all other provisions of Part 4. Moreover, this relief is applicable to "X" solely in connection with its operation of the Rule 4.7 Exempt Pools, as discussed above.

This letter, and the exemptions granted herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances, including "A" no longer being the main partner responsible for providing legal services to "X" and the pools it operates, might render these exemptions void. You must notify us immediately in the event the operations or activities of "X" with respect to the Rule 4.7 Exempt Pools, including the composition of their investors, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Helene D. Schroeder, 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).