

CFTC Letter No. 98-69

September 24, 1998

Division of Trading & Markets

Re: Rule 4.7(a); Request for an Exemption to Treat Prospective Investors as Qualified Eligible Participants

Dear :

This is in response to your letter dated July 20, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request an exemption from Rule 4.7(a) on behalf of "X" a registered commodity pool operator¹ and the general partner of a commodity pool (the "Pool") to be organized by "X", so that two investors in the Pool may be treated as if they satisfy the qualified eligible participant ("QEP") criteria of Rule 4.7(a).²

Based upon your representations, we understand the facts to be as follows. The Pool will be organized and incorporated in Delaware as a limited partnership. Interests in the Pool will be offered exclusively to QEPs. "X" would like to admit two individuals who do not qualify as QEPs (the "Proposed Non-QEP Participants"). Together, the Proposed Non-QEP Participants own a one-half interest in "X" and are officers, registered associated persons ("APs") and listed principals of "X".³ The Proposed Non-QEP Participants are the following:

(1) "A", who is vice president responsible for systems development for "X". "A" is an active trader and investor who has managed his own portfolio for the past 20 years. He has a B.S. degree in mathematics and an M.S. in astronautical and aeronautical engineering. Together with his wife, "A" has a combined net worth in excess of \$850,000. Last year, he earned a joint income in excess of \$250,000. This year, he anticipates earning a joint income in excess of \$200,000.

(2) "B", who is vice president in charge of finance and administration for "X". Since 1980, "A" has managed the venture finance group for "Y", a merchant banker that was founded by his father. In this capacity, "B" arranges venture financings for emerging growth companies and other corporate or partnership entities located both inside and outside the United States. "B" also is responsible for "Y's" merchant banking affiliations in Japan, Israel, and Europe. He has a bachelors degree in philosophy and an MBA in finance. Together with his wife, he has a net worth in excess of \$1 million. Last year, he earned a joint income in excess of

\$200,000. This year, he anticipates earning a joint income in excess of \$400,000.

In support of your request, you assert that "X" will obtain the written consent of each of the Proposed Non-QEP Participants to be treated as a QEP for purposes of investing in the Pool, and further, that each Proposed Non-QEP Participant will be given access to all information pertinent to an investment in the Pool.

Based upon the foregoing, it appears that granting your request 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 treat the Proposed Non-QEP Participants as QEPs and continue to claim relief pursuant to Rule 4.7(a) notwithstanding their investment in the Fund. This exemption is, however, subject to the condition that "X" provide the Division with written notice of the name of the Pool within ten business days after the name is selected.

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 letter 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 and are subject to compliance with the condition stated above. 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 Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

¹ "X" also is registered as a commodity trading advisor ("CTA").

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1998).

³ "A", discussed herein, owns a 35% share of "X" while "B" owns a 15% share. The remaining interest is held by "C", a registered AP and listed principal, who also qualifies as a QEP.