

CFTC Letter No. 97-77

September 16, 1997

Division of Trading & Markets

Re: Section 4m(1) of the Act; Inc. - Request for Relief from CPO Registration

Dear :

This is in response to the letter of R dated March 10, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by facsimile transmissions dated March 31, 1997 and April 7, 1997 from S and telephone conversations among R, S, you and Division staff¹. By this correspondence, you request on behalf of T relief from the commodity pool operator (CPO) registration requirement in Section 4m(1) the Commodity Exchange Act (the Act²) in connection with its operation of R.

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. R was organized as a general partnership on June 1, 1994 in order to trade commodity futures contracts. S, a registered CPO and commodity trading advisor ("CTA"), provides commodity trading advice to R through the use of a computer program designed and developed by A, the president, sole principal and sole associated person ("AP") of S. The partners of R are:

- (1) T, a registered CPO and CTA.
- (2) "T Plan", a noncontributory pension plan whose trustee is B, who is chairman, treasurer, a listed principal and a registered AP of T³. T Plan participants are current and former employees of T. Specifically, the participants are:
 - (a) The four listed principals of T: B; C, corporate secretary and wife of B; D, president; and E, vice president of finance⁴.
 - (b) Five registered APs of T: F, office manager; G, H and I, research associates; and J, computer programming associate.
 - (c) K, compliance chief of T⁵.

(d) Three former employees of T who have familial ties to B : his former wife, L ; his daughter, M ; and his nephew, N .

(e) Two former employees of T who do not have familial ties to B : O , who was director of sales from January 1995; to December 1996; and P , who was assistant general manager from October 1978 to May 1979.

(3) S .

(4) Q , administrator of S and wife of A .

(5) "S Fund", a noncontributory pension plan whose trustees and participants are A and his wife.

(6) DD and EE, A's daughter and her husband, who work as a mathematician and computer scientist for S , respectively.

(7) S Plan", a noncontributory pension plan whose trustee is A and whose participants are DD and EE.

(8) FF , A's daughter.

The R partnership agreement provides that the only ad-additional persons that can be admitted to the partnership are: B , his wife or his lineal descendants; any corporation or other entity controlled by B , his wife or his lineal descendants; A , his wife or his lineal descendants; and any corporation or other entity controlled by A , his wife or his lineal descendants.

Moreover, T has a close business relationship with S . T is the CPO of two commodity pools that retain S as one of their CTAs. Also, T performs for S such back office functions as trade reconciliation for R and other S clients.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against T for failure to comply with the CPO registration requirement of Section 4m(1) of the Act.

The relief issued by this letter is applicable to T solely in connection with its operation of R . It does not excuse T from compliance with any other applicable requirements contained in the Act⁶ or the Commission's regulations issued thereunder with respect to its operation of R . For example,

it remains subject to the antifraud provisions of Section 40 of the Act,⁷ to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to Rules 4.20 and 4.41 with respect to its operation of R.⁸

This letter is based upon the representations that have been made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations or activities of R, including the composition of its partners, change in any way from those as represented to us. Further, this letter represents the position of the Division only. It does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Acting Director

¹ Subsequent to its March 10, 1997 letter, R engaged your firm to represent it in this matter.

² 7 U.S.C. §6m(1) (1994).

³ Commission records show that B also is a listed principal and registered AP of V, a registered CPO and CTA; a listed principal and registered AP of W, a registered CPO and CTA; and a listed principal of X, a registered introducing broker.

⁴ D and E also are registered APs of T.

⁵ K was registered as an AP of T from July 1984 to October 1990. He currently is a listed principal and registered AP of both V and W.

⁶ See 7 U.S.C. § 1 et seq. (1994).

⁷ 7 U.S.C. § 6b (1994).

⁸ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).