

CFTC Letter No. 97-78**September 24, 1997****Division of Trading & Markets**

Re: Rule 4.10(d)(1) -- Request that a Limited Partnership Comprised of Immediate Family Members Not be Considered a Commodity Pool

Dear :

This is in response to your letter dated August 12, 1997, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by telephone conversations with Division staff. By this correspondence, you request on behalf of (the Partnership), confirmation that: (1) the Partnership is not a commodity pool within the meaning and intent of Rule 4.10(d)(1)¹; (2) the Partnership is a qualified eligible participant ("QEP") under Rule 4.7(a)(1)(ii)(B)(2)(viii); and (3) the Partnership may invest more than ten percent of the fair market value of its assets in Rule 4.7 exempt pools (the "Funds").

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The Partnership is a New Jersey limited partnership and has been formed solely to serve the investment purposes of the members of the families of A , B and C . The Partnership engages in all aspects of capital investment and management, either directly or through investments in other partnerships. The Partnership was not formed for the specific purpose of participating in the Funds and it will make other substantial investments in addition to its participation in the Funds. As of July 1, 1997, the net capital of the Partnership was in excess of \$35 million.

The managing general partners of the Partnership are A and B , her sister-in-law, both of whom are QEPs. C , the former husband of A , acts as a non-managing general partner (together with the managing partners, the "General Partners"). The limited partners consist of: the General Partners; B's three children and two trusts of which they are the beneficiaries; a trust in the name of the late D , who was A's brother and B's husband, of which B is the current beneficiary; B's sister, E ; grandson, F ; a trust for the benefit of A ; two trusts of which A's two sons are the beneficiaries; and C's present spouse. Either A or B acts as trustee for each of the trusts that are limited partners, with full investment discretion for the respective trusts of which they serve as trustees. In addition, the Partnership may wish to offer limited partnership interests to additional immediate family members of the General Partners or trusts for the benefit of such family members in the future.

With respect to your request for confirmation that the Partnership is not a commodity pool, based upon your representations that the limited partners of the Partnership are the General Partners and their current or former immediate family members and trusts for the benefit of the General Partners and their immediate family members, and consistent with our prior practice in this area,² the Division confirms that the Partnership is not a commodity pool within the meaning and intent of Rule 4.10(d)(1) and, consequently, that the General Partners are not CPOs thereof. In addition, the Division confirms that the Partnership qualifies as a QEP pursuant to Rule 4.7(a)(1)(ii)(B)(2) (viii)³ based upon your representations that the Partnership has total assets in excess of \$5 million, was not formed for the specific purpose of participating in the Funds, and our conclusion that the Partnership is not a pool. Further, we confirm that the Partnership may invest more than ten percent of the fair market value of its assets in the Funds.

This letter does not excuse the General Partners from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (Act⁴) or the Commission's regulations issued thereunder. For example, the General Partners remain subject to the antifraud provisions of Sections 4b and 4o of the Act⁵ and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations. Moreover, this relief is applicable to the General Partners solely in connection with their operation of the Partnership.

The relief granted in this letter is based upon the representations you have 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 the General Partners or the Partnership, including its membership composition, change in any way from those as represented to us.

This letter represents the position of this Division only. It does not necessarily represent the views of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Charles O'Brien of my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

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

² See, e.g., CFTC Interpretative Letter No. 97-29, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,039 (March 21, 1997).

³ Rule 4.7(a)(1)(ii)(B)(2)(viii) provides that a QEP is a "corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of \$5,000,000, and is not formed for the specific purpose of participating in the exempt pool[.]"

⁴ 7 U.S.C. § 1 *et seq.* (1994).

⁵ 7 U.S.C. §§ 6b and 6o (1994).