

Commodity Futures Law Reporter, CFTC Interpretative Letter No. 97-29. (Re: Request for Relief from Regulation as a CPO.), ¶27,039, Commodity Futures Trading Commission, (Mar. 21, 1997)

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¶27,039. Commodity Futures Trading Commission. Division of Trading and Markets. March 21, 1997. Staff reply in full text.

Interpretations: Commodity Pools: Partnerships.— A partnership consisting of a husband and wife, custodial accounts for their children, and trusts established for the benefit of the husband or wife and their descendants was not a commodity pool within the meaning and intent of Rule 4.10(d)(1) and, consequently, the general partner was not a CPO thereof.

See ¶8551, "Reports—Records" division, Volume 1.

Interpretations: Commodity Pools: General Partners: Ten Percent Limitation on Assets Invested in Exempt Pools.— Because a partnership qualified for treatment as a QEP under Rule 4.7(a)(1)(ii)(B)(2)(viii), the general partner did not need relief from the ten percent restriction imposed on the assets of a Rule 4.7(a) exempt pool that may be used to purchase units in other Rule 4.7(a) exempt pools where not all the investors in the investor fund will be QEPs.

See ¶8551, "Reports—Records" division, Volume 1.

This is in response to your letter dated February 27, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") By your letter you request that: (1) the "General Partner" be relieved from regulation as a commodity pool operator ("CPO") in connection with the investment of the "Partnership" in a Rule 4.7(a) ¹ exempt pool (the "Fund"); and (2) the General Partner be permitted to invest more than ten percent of the assets of the Partnership in the Fund.

Based upon the representations made in your letter, we understand the pertinent facts to be as follow. The Partnership commenced operations as an investment partnership on December 23, 1996. It was formed solely for the members of the family of "A" for the purpose of engaging in all aspects of capital investment and management, directly or through other partnerships. The Partnership was not formed for the specific purpose of participating in the Fund and will make other substantial investments in addition to its investment in the Fund. As of January 31, 1997, the net capital of the Partnership was approximately \$5 million.

The limited partners of the Partnership (the "Limited Partners") consist of "A" and his wife, "B", both of whom are qualified eligible participants ("QEPs"), ² and three custodial accounts for the "C" children. "A" and "B" intend to sell a portion of their limited partnership interests to two irrevocable grantor trusts (the "Trusts"). One Trust will be established by "A" for the benefit of "B" and "A" and "B's" living descendants. The other Trust will be established by "B" for the benefit of "A" and "A" and "B's" living descendants.

With respect to your request for relief from CPO registration, based on your representations that all of the limited partners in the Partnership are family members of "A" and "B" or custodial accounts or trusts established for the benefit of "A" or "B" and their descendants, and consistent with our prior practice in this area, ³ we believe that the Partnership is not a commodity "pool" within the meaning and intent of Rule 4.10(d)(1) and, consequently, that the General Partner is not a CPO thereof.

With respect to your request for relief from Rule 4.7(a) for the General Partner, we do not believe that such relief is necessary. Rule 4.7(a) imposes a ten percent restriction on the assets of a Rule 4.7(a) exempt pool that may be used to purchase units in other Rule 4.7(a) exempt pools, where, as here, not all of the investors in the investor fund will be QEPs. ⁴ However, because the Partnership is not a pool (and has total assets in excess of \$5,000,000 and was not formed for the specific purpose of participating in the Fund), it qualifies for treatment as a QEP pursuant to Rule 4.7(a)(1)(ii)(B)(2)(viii). ⁵ This subparagraph does not impose a ten percent investment restriction. Accordingly, it is unnecessary for the Division to separately pass upon the merits of this portion of your request.

You should be aware that the opinions expressed in this letter do not excuse the General Partner from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act ⁶ ("Act") or in the Commission's regulations promulgated thereunder. For example, it remains subject to the antifraud provisions of Sections 4b and 4 o of the Act and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations. Moreover, this letter is applicable to the General Partner solely in connection with its operation of the Partnership.

The opinions expressed in this letter are based upon the representations that you have made to us and are strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations, activities or ownership of the General Partner or the Partnership change in any way from those as represented to us. Further, the opinions expressed herein represent the position of the Division of Trading and Markets only. They do not necessarily represent the views of the Commission or of any other unit or division of the Commission. If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at 202-418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

Footnotes

- 1 Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996).
- 2 "A's" net worth is approximately \$50 million. He has over 19 years of experience in the securities business.
- 3 See, e.g., CFTC Interpretive Letter No. 96-24, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26.653 (March 4, 1996); CFTC Interpretive Letter No. 95-35, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26.376 (November 23, 1994).
- 4 The Trusts will not be QEPs.
- 5 Rule 4.7(a)(1)(ii)(B)(2)(viii) provides the following definition of a QEP: "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."
- 6 The Act is found at 7 U.S.C. §§1 *et seq.* (1994).