

CFTC Letter No. 97-52

June 24, 1997

Division of Trading & Markets

Re: Request that Limited Partnership Not be Considered a Commodity Pool

Dear :

This is in response to your letter dated June 10, 1997, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission). By your letter you request that: (1) the Partnership not be considered a commodity pool within the meaning and intent of Rule 4.10(d)(1);¹ (2) the Partnership be treated as a qualified eligible participant (QEP) pursuant to Rule 4.7(a)(1)(ii)(B)(2)(viii); and (3) the Partnership be permitted to invest more than ten percent of its assets in a Rule 4.7(a) exempt pool (the Fund).

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. The Partnership will be formed later this month. It will be a limited partnership formed solely to serve the investment purposes of the members of the family of A and it will engage in all aspects of capital investment and management, directly or through investments in other partnerships. The Partnership is not being formed for the specific purpose of participating in the Fund and it will make other substantial investments in addition to its participation in the Fund. The initial net capital of the Partnership will be in excess of \$5 million.

The general partner will be the General Partner . The two members of the General Partner will be A², the managing member, and B , his wife, who also will be the initial limited partners of the Partnership. They intend subsequently to sell a portion of their limited partnership interests in the Partnership to two irrevocable grantor trusts. One trust will be established by A , and its beneficiaries will be B and the living descendants of A and B . The other trust will be established by B , and its beneficiaries will be A and the living descendants of A and B .

With respect to your request for relief from CPO registration, based on your representations that the limited partners in the Partnership initially will be A and B and subsequently will be trusts established for the benefit of A or B and their living descendants, and consistent with our prior practice in this area,³ 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 Partner is not a CPO thereof. In addition, the Division confirms that the Partnership qualifies as a QEP pursuant to Rule 4.7(a)(1)(ii)(B)(2)(viii)⁴ based upon your representations that the Partnership will have total assets in excess of \$5 million, will not be formed for the specific purpose of participating in the Fund,

and our finding that the Partnership is not a pool.

Finally, with respect to your request for relief from Rule 4.7(a), we do not believe such relief is necessary. Rule 4.7(a) imposes a ten percent restriction on the fair market value of 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 of the investors in the investor fund will be QEPs. As noted above, the Partnership is not a pool and qualifies for treatment as a QEP pursuant to Rule 4.7(a)(1)(ii)(B)(2)(viii). 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 Act⁵ (Act) or in the Commission s regulations issued thereunder. For example, it remains subject to the anti-fraud provisions of Section 4o of the Act and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the 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 regard, we request that you notify us immediately in the event the operations or activities of the General Partner or the Partnership, including its membership composition, change in any way from those represented to us. Further, the opinions expressed herein represent the position of the Division only. They do not necessarily represent the views of the Commission or of any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Barbara Stern Gold, Assistant Chief Counsel, at 202-418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996).

² A meets the requirements for a natural person to be considered a QEP inasmuch as his net worth is in excess of \$40 million. Also, he is an experienced private investor and serves as President and Chairman of the Board of Directors of X .

³ See, e.g., CFTC Interpretive Letter No. 97-29 (March 21, 1997), (to be published in Comm. Fut. L. Rep. (CCH)).

⁴ Rule 4.7(a)(1)(ii)(B)(2)(viii) provides that a QEP is a corporation, 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[.]

⁵ The Act is found at 7 U.S.C. §§ 1 et seq. (1994).