

CFTC Letter No. 02-21

March 1, 2002

No-Action

Division of Trading and Markets

Re: Section 4m(1); “V” and “W” Relief from Registration as a Commodity Pool Operator

Dear:

This is in response to your letter dated December 5, 2001 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”), as supplemented by your letters dated January 17 and January 30, 2002 and telephone conversations with Division staff. By your correspondence you request on behalf of “V” and “W” relief from the requirement to register as a commodity pool operator (“CPO”) under Section 4m(1) of the Commodity Exchange Act (“Act”)^[1] in connection with their serving as Co-General Partners of “Partnership”. Specifically, “V” and “W” serve as Co-General Partners of Partnership with “X”.

Based upon the representations made in your correspondence, it appears that granting the requested relief would not be contrary to the public interest or the purposes of Section 4m(1) of the Act.

Accordingly, and consistent with the Division’s prior practice in this area,^[2] the Division will not recommend that the Commission commence any enforcement action under Section 4m(1) against “V” or “W” based solely upon their failure to register as a CPO, notwithstanding that each serves as a Co-General Partner of the Partnership.

The Division’s position is based upon, among others, your representations that: (1) “X” is registered as a CPO with the Commission; (2) “A”, the sole member of “V”, and “B”, the sole member of “W”, are each listed as a principal of “Y”, a registered CPO of which “C”, the sole member of “X”, also is listed as a principal; (3) neither “V” nor “W” is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act;^[3] (4) “X” exercises the functions of a Managing Partner with respect to the Partnership and, as such, will undertake all “Commodities-Related Activities” with respect to the Partnership;^[4] and (5) “V” and “W”, as the requesting CPOs, and “X”, as the registered CPO, acknowledged that they will be jointly and severally liable for any violations of the Act or the Commission’s regulations issued thereunder committed by the other in connection with the operation of the Partnership.

This letter does not excuse “V” or “W” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations. For example, “V” and “W” remain subject to all antifraud provisions of the Act and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations and to all applicable provisions of Part 4. Nor does this letter affect in any way the compliance obligations of “X” as the registered CPO of the Partnership.

This letter, and the no-action position issued herein, is based upon the representations that you have made to the Division and is applicable to “V” and “W” solely in connection with their serving as Co-General Partners of the Partnership. Any different, changed or omitted material facts or circumstances might render this position void. You must notify the Division immediately in the event that the operations or activities of “V”, “W”, “X” or the Partnership change in any material way from those represented to us. Further, this letter represents the position of the Division only. It does not necessarily reflect the views of the Commission or of any other division or office of the Commission.

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

Very truly yours,

John C. Lawton
Acting Director

[\[1\]](#) 7 U.S.C. § 6m(1) (2000).[\[1\]](#)

² See, e.g., CFTC Staff Letter No. 00-82, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,204 (July 5, 2000); CFTC Staff Letter No. 94-69, [1992-94 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,158 (May 31, 1994).

[\[3\]](#) 7 U.S.C. § 12a(2) or 12a(3).[\[1\]](#)

⁴ Your December 5, 2001 letter defines these activities to include: (1) the solicitation, acceptance and receipt of funds or property to be used for purchasing, holding or selling commodities for the Partnership; and (2) the investment, use and other disposition of such funds or property for the purpose of purchasing, holding or selling commodities for the Partnership. Moreover, “C” makes all securities investment decisions for the Partnership.