



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

James L. Carley
Director

April 20, 2005

Re: Section 4m(1) – Request for Relief from Commodity Pool Operator and
Commodity Trading Advisor Registration in Connection with the Operation of the
“A” Family of Funds Administered by an Affiliate of “V”

Dear :

This is in response to your letter dated February 25, 2005, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), as supplemented by your e-mail messages dated March 3, 2005 and March 8, 2005, and by telephone conversations with Division staff. By your correspondence, you request relief on behalf of “U”, a division of “V” and the directors (“Directors”) of the funds of the “A” family of funds (each a “Fund” and collectively, the “Funds”). With respect to “U”, you request relief from the requirement to register as a commodity pool operator (“CPO”) or as a commodity trading advisor (“CTA”) under Section 4m(1)¹ of the Commodity Exchange Act (the “Act”), and with respect to the Directors, you request relief from the requirement to register as a CPO under Section 4m(1), all in connection with advising and operating the Funds.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Funds are registered as investment companies under the laws of the Commonwealth of Puerto Rico.² Each Fund has its principal place of business and maintains its books and records in Puerto Rico. The Funds propose to begin trading commodity interests. The Funds’ securities may be offered and sold only to persons who have their principal residence or place of business in Puerto Rico, and their governing documents prohibit ownership of Fund securities by anyone other than a Puerto Rico resident.

¹ 7 U.S.C. §6m(1) (2000).

² Each Fund is exempt from the requirement to register with the Securities and Exchange Commission under the Investment Company Act of 1940 (“ICA”) pursuant to Section 6(a)(1) of the ICA (which provision exempts “[a]ny company organized or otherwise created under the laws of and having its principal office and place of business in Puerto Rico”).

“U” is a division of “V”, a bank chartered under the laws of the Commonwealth of Puerto Rico whose trust division is the administrator of, and whose affiliate “W” is the principal distributor for, each of the Funds. “U” is exempt from the requirement to register with the SEC as an investment adviser under the Investment Advisers Act of 1940 (the “IAA”).³

The overall management of each Fund is under the control of its board of directors, with day-to-day operations delegated to the Fund’s officers and to “V’s” trust division as the Fund’s administrator. All meetings of Fund boards of directors and all of the activities related to the management of the Funds are conducted in Puerto Rico. No more than 25 percent of a Fund’s board of directors will be U.S. citizens who are not residents of Puerto Rico, and such Directors will not be involved in any solicitation activities on behalf of a Fund nor will they control or supervise Fund operations on a day-to-day basis. At least 75 percent of the directors of each Fund will have their principal residence in Puerto Rico and none of the Directors or “U” is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.⁴

But for the exemption provided by Section 6(a)(1) of the ICA, each of the Funds would be required to register with the SEC as an investment company under the ICA. As such, each would be eligible for the exclusion from the CPO definition provided by Commission Rule 4.5.⁵ Instead, the Funds are registered under, and operated pursuant to the requirements of, the Puerto Rico Investment Company Act.⁶

You call the Division’s attention to three previous staff letters in which relief similar to that which you seek was granted in connection with the operation of Puerto Rican investment funds that traded commodity interests.⁷ You represent that the relevant facts related to the Funds and your request are virtually identical to the prior staff letters.

³ Section 202(a)(11) of the IAA (15 U.S.C. 80b-2(a)(11)) excludes from the definition of “investment adviser” a bank that is not an investment company and that does not serve or act as an investment adviser to a registered investment company. You represent that although it is a division of a bank, “U” does not serve as an investment adviser to a registered investment company and is thereby not required to register as an investment adviser under the IAA.

⁴ 7 U.S.C. §12a(2) or 12a(3).

⁵ The Commission recently amended certain rules in Part 4 of its regulations at 68 Fed. Reg. 47221 (August 8, 2003). All other Commission rules referred to herein are found at 17 C.F.R. Ch. I (2004).

⁶ Act No. 6 of October 19, 1954, as amended, 10 L.P.R.A. 661.

⁷ CFTC Staff Letter 03-33 [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,610 (October 1, 2003); CFTC Staff Letter 95-77 [1994-96 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,523 (July 10, 1995); and Staff Letter 95-30 [1994-96 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,371 (February 10, 1995).

Based upon the representations made in your correspondence, and consistent with prior practice in this area, the Division will not recommend that the Commission commence any enforcement action against: (1) “U” or any of the Directors for failure to register as a CPO under Section 4m(1) of the Act; or (2) “U” for failure to register as a CTA under Section 4m(1) of the Act, all in connection with operating and advising the Funds.

The no-action positions taken in this letter do not excuse the Directors or “U” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, each remains subject to all antifraud provisions of the Act⁸ and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations, and to all applicable provisions of Part 4.

This letter, and the no-action positions taken herein, are based upon the representations made to us. Any different, changed or omitted material facts or circumstances might render these positions void. You must notify the Division immediately in the event that the operations or activities of “U”, the Directors or the Funds change in any respect from those as represented to us. Further, this letter and the positions taken herein represent the views of this Division only and 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 Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

James L. Carley
Director

⁸ See, e.g., Sections 4b and 4o, 7 U.S.C. §§6b and 6o (2000).