



COMMODITY FUTURES TRADING COMMISSION

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COMMODITY FUTURES
TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

95-28

March 13, 1995

Re: Relief from Introducing Broker
Registration -- Section 4d of the Act

Dear :

This is in response to your letter dated January 23, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. In your letter, you requested that the Division grant relief to "V" and "W", an "A" corporation (the "Company"), under Section 4d of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6d (1988).^{1/} The Company is currently seeking registration as a commodity pool operator ("CPO"), and in connection therewith, you request that the Company not be required to register also as an introducing broker ("IB") if commissions that "V" earns in his capacity as an associated person ("AP") of a registered IB, "Y", an "A" corporation ("Y"), are paid directly to the Company, an entity wholly owned and controlled by "V", instead of to "V", individually, as an employee/AP of "Y".

Based upon the representations made in your letter, as supplemented by telephone conversations with Division staff, we understand the relevant facts to be as follows. A commodity pool is being established as "Z", an "A" limited partnership (the "Limited Partnership Pool"). The Company is the general partner of the Limited Partnership Pool, and has submitted an application for registration as a CPO. "V" is the sole shareholder, director and officer of the Company.

"V" is also currently employed as an AP of "Y". A vice president and minority shareholder of "Y", "B", will be the commodity trading advisor ("CTA") of the Limited Partnership Pool. When the Limited Partnership Pool begins trading, the trades will

^{1/} The Act is found at 7 U.S.C. §§ 1 et seq. (1988 & Supp. V 1993). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

be introduced to a futures commission merchant through "Y", with "V" acting as the account executive. "Y", the IB, will receive commissions; a portion of such commissions will then be due to "V". "V", as sole owner of the Company, prefers to have the portion of the commissions due him paid directly to the Company, so that such funds are received as income to the Company rather than as employee compensation to him as an employee/AP of "Y". However, "V" would like to avoid registering the Company as an IB.

Based upon the facts set forth above, and particularly in light of the Company's registration as a CPO and "V's" registration as an AP of both "Y", a registered IB, and the Company, the Division confirms that it will not recommend that the Commission commence enforcement action based solely upon the failure of the Company, an entity wholly owned and controlled by "V", to register as an IB, subject to the condition that the Company file with the Division and the National Futures Association a letter, signed by a person authorized to bind the Company, stating that the Company shall be jointly and severally liable with "Y" for the activities of "V", acting in his capacity, as an AP, whether he is acting on behalf of the Company or "Y".^{2/}

This letter is based on the representations made in your letter, as supplemented, and is subject to compliance with the condition set forth above. Any different, changed or omitted facts or circumstances might cause us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the operations or activities of the Limited Partnership Pool, the Company, "V" or "Y" change in any way from those as represented to us.

^{2/} In your letter, you express the view that the Company, in connection with its receipt of such monies as described above, falls within the exclusionary provision of Rule 1.3(mm), in which IBs are defined, for certain CPOs. Rule 1.3(mm) provides, in relevant part:

That the term introducing broker shall not include: . . .
(iii) any commodity pool operator which, acting in its capacity as a commodity pool operator, solely operates commodity pools, regardless of whether that commodity pool operator is registered or exempt from registration in such capacity.

We do not believe that the Company, when receiving such monies, is acting in its capacity as a commodity pool operator, and therefore, the exclusionary provisions of Rule 1.3(mm) do not apply.

This letter does not excuse the Company, "V" or "Y" from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations promulgated thereunder. For example, "Y", and "V" as its AP, remain subject to the provisions of Section 4d and 4f of the Act^{3/} and the rules promulgated thereunder, the Company, "V" and "Y" remain subject to the antifraud provisions of Section 4b of the Act^{4/}, and the Company and "V" remain subject to the antifraud provisions of Section 4g of the Act.^{5/}

Finally, this letter represents the position of this Division only. It does not necessarily reflect the position of the Commission or any other office or division of the Commission. If you have any questions concerning the foregoing, please contact me or Sharon Zackula, a member of my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} 7 U.S.C. § 6d (1988); 7 U.S.C. § 6f (1988 & Supp. V 1993).

^{4/} 7 U.S.C. § 6b (1988 & Supp. V 1993).

^{5/} 7 U.S.C. § 6g (1988).