

Commodity Futures Law Reporter, CFTC Interpretative Letter No. 95-35. (Request for Relief from Commodity Pool Operator Regulation.), ¶26,376, Commodity Futures Trading Commission, (Nov. 23, 1994)

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¶26,376. Commodity Futures Trading Commission. Division of Trading and Markets. November 23, 1994. Staff response in full text.

Interpretations: Joint Business Venture Partnership: Pool: Immediate Family Members.— A partnership that was in the form of a joint business venture made available only to immediate family members would not be a "pool" according to the meaning and intent of Rule 4.10(d). Thus, the general partner/CTA of the partnership would not be required to register as a CPO. In addition, the general partner/CTA would be exempt from the disclosure and recordkeeping requirements of Rule 4.31 and 4.32.

See ¶7760, "Registration" division, Volume 1.

This is in response to your letter October 13, 1994, in which you request the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission") to: (1) confirm that a California limited partnership which you seek to form (the "Partnership") is not a commodity pool within the meaning and intent of Rule 4.10(d);¹ and (2) provide relief from the disclosure and recordkeeping requirements of Rules 4.31 and 4.32, respectively, applicable to commodity trading advisors ("CTAs") in connection with providing commodity trading advice to the Partnership.

Based upon the representations made in your letter, as supplemented by telephone conversations with Division staff, we understand the facts to be as follows. You are registered as a CTA and currently manage four commodity trading accounts, one for your mother, one for your brother, one for a family trust ("Trust") of which you are the trustee and one of the beneficiaries, and your personal account.² Excluding your own account, the total gross capital contributions to the commodity accounts total approximately \$900,000. You do not charge any fees in connection with managing the accounts, except that with respect to the Trust account, you receive approximately \$3,000 annually from Trust assets to pay your expenses incurred in trading the Trust's account.

You will be the general partner of the Partnership. The limited partners of the Partnership will be your mother, your brother and the Trust account. It is not intended at this time that interests in the Partnership will be offered to any other parties. However, you seek to reserve the right to offer interests in the Partnership to other immediate family members.³

On behalf of the Partnership you wish to open a commodity interest trading account. Your intention is to simplify the trading of commodity interests on behalf of your immediate family members and the Trust by consolidating all four accounts into one Partnership account. You will not charge any fees in connection with operating the Partnership, but you will deduct expenses incurred in trading the Partnership account.

The Division has interpreted Rule 4.10(d) in factual contexts similar to those of the instant request. For example, in Interpretative Letter 83-9, [1982-1984 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶21,909 (November 3, 1983), the Division concluded that a joint trading account comprised of immediate family members and formed to obtain lower commissions than any of the participants could obtain separately was not a pool within the meaning and intent of Rule 4.10(d). Similarly, in Interpretative Letter No. 86-10, [1986-1987 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶23,016 (April 24, 1986), the Division found that a limited partnership comprised of family trusts, family members and long-term associates was not included within the definition of a commodity pool.

Based upon our review of the representations made in your letter, as supplemented, it appears that the Partnership will be in the nature of a joint business venture made available to immediate family members. Accordingly, it appears that the Partnership would not be a "pool" within the meaning and intent of Rule 4.10(d) and that you, as the general partner of the Partnership, would not be required to register as a

commodity pool operator (“CPO”) of the Partnership. This position is, however, subject to the condition that you provide the Division with written notice of the name of the Partnership when that name is selected.

In addition, based upon your representations, and pursuant to the authority delegated by Rule 140.93(a) (1), the Division hereby exempts you from the requirements of Rules 4.31 and 4.32 applicable to CTAs such that you need not provide the Partnership with a disclosure document as required by Rule 4.31 nor maintain records as required by Rule 4.32.

You should be aware that the views expressed in this letter do not excuse you from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (“Act”) ⁴ or in the Commission's regulations promulgated thereunder. For example, you remain subject to antifraud provisions of Section 4 o of the Act ⁵ and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations. In addition, this letter is based upon the representations that you have made to us and is subject to compliance with the condition set forth above. 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 or activities of the Partnership, including ownership of limited partnership interests, change in any way from those as represented to us.

The views expressed herein represent the position of the Division of Trading and Markets 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 Tina Paraskevas Shea, an attorney on my staff, at (202) 254-8955.

Very truly yours,
Susan C. Ervin
Chief Counsel

Footnotes

- 1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).
- 2 The other beneficiaries of the Trust are your three brothers.
- 3 Thus, the Partnership will restrict the purchase of additional limited partnership interests to the parent, spouse, child, sibling, parent-in-law or sibling-in-law of the proposed current general and limited partners.
- 4 7 U.S.C. §1 *et seq.* (1988 & Supp. IV 1992).
- 5 7 U.S.C. §6 o (1988 & Supp. IV 1992).