



U.S. COMMODITY FUTURES TRADING COMMISSION

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Records Section

DIVISION OF
TRADING & MARKETS

95-93

November 15, 1995

Re: Request for Interpretation of Exemption
from Registration as a CTA in Section 4m(1)
of the Commodity Exchange Act

Dear :

This is in response to your letter dated September 15, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, by which you inquired whether you must register as a commodity trading advisor ("CTA") under Section 4m(1) of the Commodity Exchange Act (the "Act")^{1/} in connection with providing the services described below.

Facts. Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. "X" is a sole proprietorship, operated by you. Neither you nor "X" is currently registered as a commodity pool operator ("CPO") or a CTA. However, you are the general partner and CPO of "Y", a commodity pool you operate pursuant to an exemption under Rule 4.13(a)(2) ("Y" Pool).^{2/} You represent that the

^{1/} 7 U.S.C. § 6m(1) (1994). Commission rules referred to hereinafter are found at 17 C.F.R. Ch. I (1995).

^{2/} Rule 4.13(a)(2) provides that a person who operates a commodity pool is not required to register as a CPO if: (1) the total gross capital contributions the person receives in all the pools the person operates or intends to operate do not in the aggregate exceed \$200,000; and, (2) none of the pools operated by such person has more than 15 participants at any time. In order to obtain the exemptive relief, a person must meet the above criteria and also comply with the filing, disclosure and other requirements of the rule.

Our records reflect that on date, 1994, the Division received a filing made pursuant to Rule 4.13(a)(2) regarding your operation of the "Y" Pool.

pool has five investors currently, and a sixth investor will probably participate by the end of the year. You have developed a model for trading options, futures and options on futures on any commodity, including bonds, equity securities and stock indices, the price for which is subject to real-time reporting on an electronic service.

You have been asked by a partner of "Z" to provide commodity trading advice to "Z" by using your model. "Z", a partnership comprised of four general partners, has funds under management of approximately \$10 million. The funds are those of the four general partners. The business purpose of the partnership is to invest its assets in the financial markets. To date, the partnership has invested such assets in the stock market. One of the partners, "A", contacted you when the partnership began to consider entering into transactions in futures and options on futures contracts on various long-term U.S. government bonds. To establish such positions, "Z" intends to commit as aggregate initial margin and premiums less than one percent of "Z's" funds under management.

Each partner is engaged in the business of investing and managing the partnership's assets and may veto any proposed investment that he does not think is appropriate for the partnership. Also, each partner has more than 20 years of experience as an investor in the securities market and is an accredited investor.^{3/} "A", however, is the general partner who has been designated to make investment recommendations to the four partners and implement such decisions, provided that the other partners do not object to the proposed investments. He does not receive compensation from the partnership for this activity.

You represent that neither "X" nor you has marketed your expertise in commodity interest trading and that you have not solicited "A" or any of his partners to provide commodity trading advice to any of them. Instead, your communication with "A" developed as follows. You state that you have known "A" since 1990, when you met him at a seminar concerning the electronic display and dissemination of information on the bond markets. The seminar was not open to the public but was "by invitation only" and was held for the purpose of obtaining from users of bond market information how best to display such information electronically. You sat next to "A" at the conference. Persons who are your and "A's" mutual friends and business acquaintances also attended the conference and, during its course, you and he

^{3/} The term "accredited investor" is defined in Regulation D, promulgated by the Securities and Exchange Commission, 17 C.F.R. § 230.501(a) (1995).

became acquainted. During the period of five years from the conference to the time "A" contacted you by phone, you and "A" maintained the relationship through occasional contact. You represent that "A" learned from mutual acquaintances that you were developing a model to use for the trading of futures and options on futures on various commodities, including U.S. government bonds, and contacted you regarding your providing such services to "Z". Although you do not have a personal relationship with any of the other three general partners, "A" has discussed your program, background and credentials with the other three general partners.

Legal Analysis. Before you were contacted by "A" to provide commodity trading advice to the four general partners of "Z", it appears that, pursuant to Rule 4.14(a)(5), you were exempt from registering as a CTA with respect to services you provided to "Y" Pool.^{4/} In your letter, you request exemptive relief to permit you to continue to claim an exemption from CTA registration while providing commodity trading advice to both the "Y" Pool and the "Z" general partners inasmuch as the exemption from Rule 4.14(a)(5) would not extend to your activities in connection with the "Z" general partners.^{5/}

Based upon the representations you have made, the Division believes that, subject to the following conditions, the relief requested would not be inappropriate. Accordingly, the Division confirms that it will not recommend that the Commission take enforcement action against you or "X" based solely upon your or "X's" failure to register as a CTA in connection with your commodity trading advisory services to the four "Z" general partners and the participants of the "Y" Pool, subject to the following conditions: (1) you and "X" together may provide commodity trading advice to not more than fifteen persons, including the participants in the "Y" Pool; (2) you and "X" must limit your

^{4/} Rule 4.14(a)(5) provides that a person exempt from registering as a CPO is not required to register as a CTA if the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt.

^{5/} The Act provides, in Section 4m(1), an exemption from registration as a CTA for a person who "during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor." In considering your request for relief as a request for a no-action position, we do not address whether "Z" is a pool under Rule 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (1995).

commodity trading advisory services to persons who are current and future participants in the "Y" Pool and the four general partners of "Z"; (3) if you or "X" continue to operate the "Y" Pool, you or "X" must do so pursuant to Rule 4.13(a)(2); and (4) "Z" may not commit more than two percent of its funds as margin or option premiums for positions in futures contracts and options on such futures.

This letter does not excuse you or "X" from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations promulgated thereunder. For example, you and "X" remain subject to the antifraud provisions of Section 40 of the Act,^{6/} the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable provisions of Part 4.

The relief granted by this letter is based upon the representations made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that your or "X's" activities in connection with the "Y" Pool or "Z" general partners change in any way from those as represented to us. Further, nothing in this letter should be construed as limiting in any way the Commission's ability to take enforcement or other action against you or any other person for any past violation of the Act or Commission regulations. Finally, this letter represents the position of the Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission. If you have any questions concerning this correspondence, please feel free to contact me or Sharon Zackula, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{6/} 7 U.S.C. § 60 (1994).