U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

96-11

DIVISION OF
TRADING & MARKETS

January 18, 1996

Re: Section 4m(1) of the Commodity Exchange Act -- Request for Relief From Registration as a CPO Where All Other Members of Limited Liability Company are Relatives, Friends or Business Associates of President

Dear :

This is in response to your letter dated September 28, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") as supplemented by telephone conversations with Division staff, whereby you request that the Division not recommend that the Commission take any enforcement action for failure to register as a commodity pool operator ("CPO") against "A" in connection with his serving as President of (the "Fund").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Fund was formed to trade solely in oil futures contracts. It is a private investment limited liability company formed by a group of individuals (the "Members") with long-standing business and/or personal relationships with "A". All of the Members in the Fund are "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, and meet the net worth or income tests under that rule.[1/] There has been no public solicitation of Members.

"A" will serve as the President of the Fund and will make all trading decisions for the Fund. He has considerable expertise in the trading of oil futures contracts. He is employed as a trader of proprietary accounts, in both the cash and futures markets, for "U". You explain that the Fund was formed "to avail its Members of the considerable expertise" of "A" in trading oil futures contracts. "A" is not subject to a statutory disquali-

---

1/ 17 C.F.R. §230.501(a) (1995).

fication under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the"Act").[2/]

In addition to "A", the Members of the Fund are as follows:

(1) "B", a close personal friend of "A" for over thirty years and formerly Assistant United States Attorney for the Western District;

(2) "C", a crude oil broker for approximately fifty percent of the crude oil transactions in the cash market made by "A" through a privately held company that engages in the purchase and sale of crude oil. "C" has known "A" professionally for the past twenty years. He will not be involved in any trades made by the Fund;

(3) and (4) The Self Directed Individual Retirement Account ("SDIRA") of "D" and "V", a Subchapter S corporation, wholly owned by "D" and his wife. "D" is in the oil and gas business, manages personal investments and is a former crude oil reseller who has been friends with "A" for over fifteen years;

(5) The SIDRA of "E". and "E's". "E" has been "A"' certified public accountant for over fifteen years;

(6) "T", a Subchapter S corporation, wholly owned by "F", which manages the extensive portfolio of stocks, bonds and real estate holdings owned by "F", who has a twenty year friendship with "A";

(7) "W", a limited liability company, formed by "A" and "G" for the benefit of their three children;

(8) "H", SDIRA. "H" is the wife of "A";

(8) "I", SDIRA, and "J", individually, who is a crude oil producer and twenty year friend of "A";

(9) "K", SDIRA. "K" is the former president of "X" and has had a twenty year friendship with "A";

(10) "Y", a 99% subsidiary of "S", a publicly traded entity. "Y's" general partner is "Z", which owns a 1% interest in "Y". "Y" is controlled by "L", who also serves as the Chairman of the Board of "Z". "L" has

---

2/ 7 U.S.C. § 12a(2) or 12a(3) (1994).

also been a business partner of "A" for over seventeen years in various partnerships which have provided a major share of "A"' income;

(11) "M", SDIRA. "M" is a first Cousin of "A" and previous business partner. "M" has invested extensively over the years and holds a diversified investment portfolio; and

(12) "N", an attorney for "L", "A" and the companies they have jointly owned since 1978.

Based upon the foregoing representations the Division believes that your request has merit. Accordingly, the Division will not recommend that the Commission take any enforcement action under section 4m(1) of the Act[3/] against "A" for failure to register as a CPO in connection with his serving as president of the Fund.

The relief issued by this letter does not excuse "A" or the Fund from compliance with any otherwise applicable requirements contained in the Act or the Commission's regulations issued thereunder. For example, "A" remains subject to the antifraud provisions of Section 4o of the Act,[4/] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other applicable provisions of Part 4.[5/]

This letter is based on the representations you have made to us and is applicable to "A" solely in connection with his serving as the president of the Fund. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations and activities of the Fund, including its Member composition or the nature of its commodity interest trading activity, change in any way from those as represented to us. Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the

---

3/ 7 U.S.C. §6m(1) (1994).

4/ 7 U.S.C. §6o (1994).

5/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 FR 38146 (July 25, 1995).

Commission. If you have any questions concerning this correspondence, please contact me or Myra Silberstein, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Susan C. Ervin
Chief Counsel