

Commodity Futures Releases, Decisions and Interpretations - All materials, CFTC Interpretative Letter No. 96-24. (Re: Request for Interpretation from Rule 4.10(d)(1).), ¶26,653, Commodity Futures Trading Commission, (Mar. 4, 1996)

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¶26,653. Commodity Futures Trading Commission. Division of Trading and Markets. March 4, 1996. Staff reply in full text.

Interpretations: CPO Registration: Partnership Composed of Family Members.— Since a limited partnership which was composed of family members was not a commodity pool, the registered CPO for the limited partnership, which at one time contained both family and non-family members, could withdraw its CPO registration. Relief was conditioned upon the following: (1) any new participants the partnership admits will be immediate family members of the CPO's sole principal/AP or trusts created for the benefit of such family members; and (2) the CPO complies with the requirements for an Annual Report for the partnership as set forth in Rule 4.7(a)(2)(iii) for the fiscal year ending December 31, 1995.

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

This is in response to your letter dated February 6, 1996 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your letter, you request an interpretation that "X" is not a commodity pool within the meaning and intent of Rule 4.10(d)(1) ¹ and therefore that "Y", the registered commodity pool operator ("CPO") of "x", may withdraw its CPO registration.

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. "Y" is "X's" general partner, and as such, is responsible for the day-to-day operations of "X". "A" is the sole principal and associated person of "Y". The general partner of "Y" is "Z", a Delaware corporation wholly owned by "A". The limited partners of "Y" are three family trusts whose beneficial owners are members of "A's" immediate family. ² "X" is the sole investment limited partnership that trades commodity interests for which "Y" serves as a general partner.

In December 1992, "Y" filed a claim of exemption under Rule 4.7 in connection with its operation of "X". At that time, the limited partners of "X" consisted of members of "A's" immediate family, as well as non-family members. During the years 1993 through 1995, all non-family members participating in "X" withdrew from the partnership. Since January 1, 1996, the only limited partners in "X" are members of "A's" immediate family. All of these limited partners are "qualified eligible participants" as that term is defined in Rule 4.7.

Based upon our review of the representations made in your letter, as supplemented, we believe that "X" is not a "pool" within the meaning and intent of Rule 4.10(d)(1) and, consequently, that "Y" is not a CPO thereof. Therefore, we will not recommend that the Commission take any enforcement action for failure to comply with Section 4m(1) of the Commodity Exchange Act ("Act") ³ against "Y" if it withdraws its CPO registration. This relief is, however, subject to the following conditions: (1) any new participants "X" admits will be immediate family members of "A" or trusts created for the benefit of such family members ⁴; and (2) "Y" complies with the requirements for an Annual Report for "X" as set forth in Rule 4.7(a)(2)(iii) for the fiscal year ending December 31, 1995 ⁵.

The relief issued by this letter does not excuse "Y" from compliance with any other applicable requirements contained in the Act or the Commission's regulations issued thereunder. For example, "Y" remains subject to the antifraud provisions of Section 4 o of the Act ⁶, 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.

This letter is based on the representations made in your letter, as supplemented. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations or activities of "Y" and "X", including its partnership composition, change in any way from those represented to us.

If you have any questions concerning this correspondence, please contact me or Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

Footnotes

- 1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995) *as amended by* 60 Fed. Reg. 38,146 (July 25, 1995).
- 2 These family members are also limited partners in "X".
- 3 U.S.C. §1 *et seq.* (1994).
- 4 You also request that the Division confirm that it will continue to view "X" as outside the scope of Rule 4.10(d)(1) if it accepts as participants persons who are "close family friends" of "A" and his family. We are currently unable to extend our relief to such persons, however, because sufficiently specific parameters for such persons have not been given. You should consult the Division for further guidance at the time "X" contemplates accepting such persons.
- 5 Inasmuch as there were participants in "X" during 1995 who were not members of "A's" immediate family, we do not believe that Rule 4.7(a)(iii) should be waived for that year.
- 6 U.S.C. §6 o (1994).