

**CFTC Letter No. 97-07****February 7, 1997****Division of Trading & Markets**

Re: 4.10(d)--Request for Relief from Commodity Pool Operator Registration

Dear :

This is in response to your letter dated January 6, 1997 to the Division of Trading and Markets ( Division ) of the Commodity Futures Trading Commission ( Commission ), as supplemented by your letter dated January 23, 1997 and telephone conversations with Division staff. By your correspondence you request that the Division confirm that X is not a commodity pool within the meaning and intent of Rule 4.10(d).[1](#)

Based upon the representations made in your letters, we understand the pertinent facts to be as follows. X is a limited partnership formed in 1993 for the purpose of investing in land and real estate. X has two limited partners: you and a family partnership. The family partnership was formed in 1989 and the partners consist of you, your spouse and your five children. There are no plans to offer interests in the family partnership to anyone other than the current partners.

The Division has interpreted Rule 4.10(d) in factual contexts similar to those of the instant request.[2](#) For example, in Interpretative Letter No. 95-18, the Division found that a partnership composed of immediate family members 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 X is in the nature of a joint business venture made available to family members. Accordingly, consistent with our prior decisions, it appears that X would not be a pool within the meaning and intent of Rule 4.10(d) if it traded commodity interests in the manner described herein.

You should be aware that the opinions expressed in this letter do not excuse X from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act ("Act") or in the Commission's regulations promulgated thereunder. For example, it remains subject to the anti-fraud provisions of Section 4b of the Act and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations. In addition, the opinions expressed in this letter are based upon the representations that you have made to us and are strictly limited to those

representations. 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, activities or ownership of X change in any way from those as represented to us. Further, the opinions expressed herein represent the position of the Division of Trading and Markets only. They do not necessarily represent the views of the Commission or of any other unit or division of the Commission. If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at 202-418-5447.

Very truly yours,

Susan C. Ervin

Chief Counsel

<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

<sup>2</sup> See, e.g., CFTC Interpretive Letter No. 95-18, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,345 (March 3, 1995).