

CFTC Letter No. 97-50

June 23, 1997

Division of Trading & Markets

Re: Request for Confirmation that General Partnership Is Not a Commodity Pool under Rule 4.10(d)(1) and Managing General Partner Is Not a Commodity Pool Operator under Section 1a(4) of the Act

Dear :

This is in response to your letter dated April 7, 1997, 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 correspondence, you request confirmation on behalf of the "Partnership" that it will not become a commodity pool as defined in Commission Rule 4.10(d)(1)¹ upon the admission of three additional general partners to the Partnership. You also request confirmation that A , the managing general partner of the Partnership, will not become a commodity pool operator ("CPO") as defined in Section 1a(4) of the Commodity Exchange Act ("Act").²

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Partnership was organized as a general partnership under the laws of Y on June 30, 1993 in order to trade commodity futures contracts pursuant to the trading program of U , a registered CPO and commodity trading advisor ("CTA"). By letter dated March 11, 1994, the Division confirmed that the Partnership was not a commodity pool and that A was not a CPO.³ A and B are the sole remaining general partners of the Partnership.⁴ Currently, the Partnership has assets of \$553,105.

The Partnership now wishes to admit three new general partners ("New Partners"). Specifically, the New Partners are:

(1) C , who is a son of B and is an accredited investor and experienced options trader. C has worked for the past nine years first for V , and subsequently for Y , which acquired V.⁵

(2) D , who is the younger son of B . He has worked as a clerk in the bond pit at W for the past two summers and plans to register as a floor trader. He

also has been buying and selling stock and stock options for his own account for the past several years.

(3) E , who has been registered as an AP of U since August 1993. He assists A in trade execution and monitors markets and positions. E was employed at V from 1985 to 1993, where he worked closely with A and assisted in trade execution and monitoring. He and A have been close friends since 1971.

Based upon your representations, the Division will not recommend that the Commission take any enforcement action against A for failing to register as a CPO in connection with his serving as the managing general partner of the Partnership. The relief issued by this letter does not excuse A from compliance with any other applicable requirements contained in the Act⁶ or the Commission's regulations issued thereunder. For example, he remains subject to the antifraud provisions of Sections 4b and 4o of the Act⁷ and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations.

This letter is based upon the representations that you have made to us. 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 that the operations or activities of the Partnership, including the composition of its membership, change in any way from those as represented to us. Further, this letter represents the position of the Division only. It 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 contact me or Natalie A. Markman, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

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

² 7 U.S.C. § 1a(4) (1994).

³ At that time, the Partnership consisted of four general partners ("Founding Partners"): A , who is registered as an associated person ("AP") and listed as a principal of U ; B , who currently is not

registered in any capacity; F , who is registered as an AP and listed as a principal of U ; and G , who is registered as an AP of U and listed as a principal of X , a registered CTA.

⁴ F and G are no longer general partners of the Partnership but may wish to reinvest in the Partnership at some point in the future. Contrary to the representations made to us in support of our March 11, 1994 letter, A , F and G were not accredited investors as defined in Regulation D under the Securities Act of 1933, as amended, at the time the Partnership was formed. See 17 C.F.R. § 230.501 (1996). Other than the foregoing, all of the representations made to us in support of our March 11, 1994 letter remain true and correct.

⁵ The Founding Partners were all employed at V , which formerly was registered as a CPO and CTA, at various times during that period. V now operates as a division of Y .

⁶ See 7 U.S.C. § 1 et seq. (1994).

⁷ 7 U.S.C. §§ 6b and 6c (1994).