

CFTC Letter No. 97-56**June 26, 1997****Division of Trading & Markets**

Re: Request for Relief from CPO registration under Section 4m(1) of the Commodity Exchange Act

Dear :

This is in response to your letter dated May 30, 1997 to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission) as supplemented by your letters dated June 11, 1997 and June 13, 1997 and by telephone conversations with Division staff. By your correspondence, you request on behalf of X relief from registration as a commodity pool operator (CPO¹) under Section 4m(1) of the Commodity Exchange Act (Act²) in connection with serving as the sole general partner of the Partnership .

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. X is owned solely by A , who also serves as X s president. Both X and A financial consultants and advisors on corporate transactions, primarily mergers and acquisitions. Since 1980, A has been a financial consultant and advisor on corporate transactions, primarily mergers and acquisitions and venture capital financing. Prior to that time, he was a principal of a hedge fund. A formed X approximately five years ago as a vehicle through which he could conduct his financial consulting business. Neither X nor A is registered with the Commission in any capacity³ and neither is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.⁴

The Partnership, which has not begun operations, is a private limited partnership that will trade, for speculative purposes, the Standard and Poor s 500 Stock Price Index futures contract and put and call options on the Standard and Poor s 500 Stock Price Index futures contract, which are traded on the Chicago Mercantile Exchange. The Partnership will have four limited partners (the Limited Partners): two United States (U.S.) persons⁵, a French company, and a family trust. The U. S. persons, the managing director of the French company, and the trustee of the family trust have all had long-standing business and/or personal relationships with A . In addition, each of the limited partners (in the case of the trust, the trustee) is a qualified eligible participant as defined in Rule 4.7(a). No advertising or general solicitation in connection with the Partnership or its organization has been or will be employed by X or A . It is intended that three Limited Partners

will invest \$75,000 each in the Partnership and one Limited Partner will invest \$50,000, for an aggregate subscribed capital of \$275,000.

Specifically, the limited partners are as follows:

- (1) B , a close personal friend of A for over seven years, who owns and operates real estate properties. He and A both serve on the board of directors for a private company in which they are shareholders.
- (2) C , a close personal friend of A for over seven years, who is a retired electronics company executive.
- (3) Y , a corporation organized under the laws of France with its principal place of business in France. The company is entirely owned by non-U.S. persons and produces television commercials for the European marketplace. It is not a foreign investment fund. A has known E , the managing director, for over 15 years. From time to time, A has advised this company on an informal basis on the structure of various transactions with financial institutions.⁶
- (4) D Family Trust (Trust), of which A has known the trustee, E , for over fifteen years. The Trust has five beneficiaries, all of whom are members of E s immediate family. E is a self-employed environmental scientist, the author of several books on environmental subjects and an environmental consultant to various U.S. government agencies and U.S. businesses. From time to time, A has advised E on an informal basis on business opportunities and transactions presented to him (not the Trust).⁷

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 against X or A for failure to register as a CPO in connection with X serving as the general partner of the Partnership.

The relief issued by this letter does not excuse X , A , or the Partnership from compliance with any applicable requirements contained in the Act or the Commission s regulations issued thereunder. For example, X remains subject to the antifraud provisions of Section 4o of the Act,⁸ 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 you have made to us and is applicable to X solely in

connection with serving as the general partner of the Partnership. 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 that the operations and activities of the Partnership, including the composition and contributions of its Limited Partners change, in any way from those represented to us. Finally, this letter represents the position of the Division only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. 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

¹ Alternatively, you sought our determination that the Partnership would not be a commodity pool as defined in Rule 4.10(d)(1). In light of the position we are taking below, it has not been necessary for us to separately consider this request. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

² 7 U.S.C. § 6m(1) (1994).

³ Further, neither X nor A is registered with any other governmental or quasi-governmental agency.

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

⁵ As used herein, the term United States person has the same meaning as that set forth in Rule 4.7(a)(1)(ii)(C).

⁶ Y has not compensated A for this advice.

⁷ E has not compensated A for this advice.

⁸ 7 U.S.C. § 6o (1994).