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1994 CFTC Ltr. LEXIS 7, *

COMMODITY FUTURES TRADING COMMISSION

TRADING AND MARKETS

94-26

1994 CFTC Ltr. LEXIS 7

Rule 4.10(d)

March 11, 1994

CORE TERMS: partner, partnership, general partner, pool, commodity, managing, jointly, staff, regulations thereunder, regulation, market-maker, investors, founding, trading, junior, supplemented, registered, combine, manage

SUMMARY: [*1] Interpretation; A general partnership will not be considered a commodity pool pursuant to Rule 4.10 (d) where: (1) the four partners are all accredited investors pursuant to Regulation D of the Securities Act of 1933; (2) the partners are close business associates and personal friends as well as industry professionals; and (3) all four have actively participated in defining the structure of the partnership, including agreeing to specific trading parameters.

INTERPRETATION

CFTC-REPLY:

Re: Interpretation of Rule 4.10 (d)

Dear XXXXX:

This is in response to your letter dated February 8, 1994, as supplemented by telephone conversations with Division staff, wherein you requested confirmation that, under the facts set forth below, (the "Partnership"), a general partnership organized in June, 1993, is not a commodity "pool" within the meaning and intent of Rule 4.10 (d). n1

----- Footnotes -----

n1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

----- End Footnotes-----

From the representations made in your letter, as supplemented, we understand the facts to

be as follows. The Partnership consists of four partners, "A", "B", "C" and "D" (collectively the "Partners"). "B" is the managing general partner. [*2] "A" has contributed \$ 33,000, "B" \$ 100,000, "C" \$ 200,000 and "D" \$ 66,000 to the Partnership. The Partners are all accredited investors pursuant to Regulation D of the Securities Act of 1933 and none is subject to a statutory disqualification under Section 8a (2) or 8a (3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 12a (2) or § 12a (3) (1988 & Supp. IV 1992). The Partners are close business associates and personal friends as well as industry professionals and worked together at "X" from 1986-1992. n2 Specifically, "B", "D" and "C" have been close friends for thirty years; "D" was a founding partner of "X" and a general partner thereof from 1977 to 1990; and "C" was, from 1983 to 1992, an active market-maker on the Chicago Board Options Exchange and, from 1985 to 1992, a junior vice-president of "X". "B" and "A" are the principals of "Y", the Partnership's CTA. Finally, the Partners jointly determined to form the Partnership and have all actively participated in defining the structure of the Partnership, including agreeing to specific trading parameters. n3

- - - - - Footnotes - - - - -

n2 "X" was a registered commodity trading advisor ("CTA") from March 1983 until September 1993 and a registered commodity pool operator ("CPO") from July 1984 until September 1993. "X" was bought by The Bank in 1983 and now operates as a division of The Bank.

- - - - - End Footnotes- - - - - [*3]

- - - - - Footnotes - - - - -

n3 You represent that the Partnership was formed following "C" and "D"'s request that "X" manage an account for them. Because the account size would have been lower than "X"'s minimum, "A" and "B" offered to combine their funds with those of "C" and "D" to create an account large enough for "X" to trade.

- - - - - End Footnotes- - - - -

Based upon the representations you have made to us and consistent with our prior practice in this area, n4 we believe that the Partnership would not be a pool within the meaning and intent of Rule 4.10 (d) and that "B", as the managing general partner, would not be the CPO thereof.

- - - - - Footnotes - - - - -

n4 See, e.g., CFTC Interpretative Letter No. 93-72, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) para. 25,801 (July 26, 1993) and Division of Trading and Markets Interpretative Letter No. 86-17, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) para. 23,200 (June 20, 1986).

----- End Footnotes-----

You should be aware that the opinion expressed in this letter does not excuse the Partnership from compliance with any other applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, the [*4] Partners each remain subject to the antifraud provisions of Section 4b of the Act, 7 U.S.C. § 6b (1988 & Supp. IV 1992), and to the reporting requirements for traders set forth in Parts 18 and 19 of the regulations. In addition, the Division notes that it is not excusing or in any way limiting the Commission's authority to proceed against the Partnership or the Partners for any past violation of the Act, 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992), or the Commission's regulations thereunder. The opinion provided herein is prospective only.

The position taken in this letter is based upon the representations that have been made to us. Any different, changed or omitted facts or conditions, for example the admission of any additional partners, might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities of the Partnership, including its membership composition, change in any way from those as represented to us. Further, this letter represents the position of the Division of Trading and Markets only. It does not necessarily represent [*5] 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 Mary Cademartori, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin

Chief Counsel

February 8, 1994

Ms. Susan Ervin
Chief Counsel
Division of Trading and Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: XXXXX

Dear Ms. Ervin:

This is to request the staffs concurrence that XXXXX, a general partnership for which XXXXX is the managing general partner, is not a commodity pool as defined by the CFTC. XXXXX is not a pool because:

- * It is a general rather than limited partnership;
- * Its four partners -- XXXXX, XXXXX, XXXXX and XXXXX -- are not only close business associates and personal friends but also futures industry professionals; and
- * The partners jointly formed XXXXX.

Close Relationship Among the Partners. The four partners all worked together at XXXXX, a major futures and securities trading company, from 1986-1990. XXXXX and XXXXX are the principals of XXXXX, XXXXX and XXXXX have been close friends for 30 years.

Financial Sophistication. [*6] XXXXX and XXXXX are the principals of XXXXX CTA, XXXXX (XXXXX charges its customary CTA fees.) XXXXX was, from 1983 to 1992, an active market-maker on the CBOE and a member of the CBOT, and he was a junior vice-partner of XXXXX from 1985 to 1992. XXXXX was a founding partner of XXXXX and a general partner there from 1977 to 1990. All four partners are SEC-accredited investors.

Joint Formation of XXXXX was formed jointly by the partners (in June 1993). Specifically, XXXXX and XXXXX, on their own initiative, asked XXXXX and XXXXX if XXXXX would manage an account for them. Because the account size would have been lower than XXXXX minimum, XXXXX and XXXXX offered to combine their funds with those of XXXXX and XXXXX to create an account large enough for XXXXX to trade.

Please contact me if you need further information.

Very truly yours,

XXXXX

CONTACT:

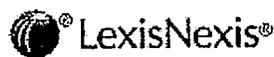
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