

**CFTC Letter No. 01-76**

**July 30, 2001**

**No-Action**

**Division of Trading and Markets**

[ADDRESSEE]

[ADDRESS]

Re: Rule 3.32 -- No-Action Relief in Connection with Registration as a  
Commodity Trading Advisor

Dear \*\*\*\*\*:

This is in response to your letter received by the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”) on July 6, 2001. By your correspondence, you request that A not be required to re-register as a commodity trading advisor (“CTA”) in accordance with Commission Rule 3.32 as a result of a merger between A and a wholly-owned subsidiary of C.[\[1\]](#) Based upon your representations, we understand the relevant facts to be as follows.

A is a wholly-owned subsidiary of B and is registered with the Commission as a CTA. B is a Massachusetts business trust owned collectively by \*\* shareholders, all of whom are employees, officers and directors of A. \*\* other persons are directors of A. A large majority of these \*\* A directors (all of whom also are B trustees) currently are listed as principals of A. C is a multi-bank holding company with \$\*\*\*\* in assets under management, administration or custody. C is registered under the Federal Bank Holding Company Act of 1956 and its stock is listed on the New York Stock Exchange.

A has entered into a reorganization agreement with C pursuant to which A will become a wholly-owned subsidiary of C. The wholly-owned subsidiary will take the name D. D will be organized as a manager-managed Delaware limited liability company.

The manager for D will be comprised of three existing directors of A (identified below) and an undetermined number of C representatives. The manager will meet quarterly to attend to matters relating to or affecting D from a C organizational perspective, including but not limited to meeting with the heads of other business units within the C organization and declaring dividends to the parent company. The responsibility for managing the day-to-day operations, however, will be delegated to the Office of the Chairman. In particular, the Office of the Chairman will be responsible for the planning and implementation of D’s strategic and operational business plans as approved by the manager, and of activities designed to integrate certain products, operations and support activities of A with those of C’s other investment management businesses.

The Office of the Chairman will consist of FG, HI, JK, and LM. FG, HI, and JK currently manage the

day-to-day operations of both A and the B as the Chairman, President/Chief Executive Officer, and Chief Operating Officer, respectively, for each entity. Each of these individuals also is an approved principal of A. LM currently is the Executive Vice President and Director of Sales, Marketing and Product Development for E, another wholly-owned subsidiary of C.

Rule 3.32 provides generally that the registration of a CTA is deemed to terminate and a new registration is required whenever a person<sup>[2]</sup> not listed as a principal<sup>[3]</sup> on the CTA's original application for registration becomes, among other things, the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock (referred to herein as "ten percent beneficial holder"), or a director of the corporate registrant. Under certain circumstances, however, the existing registration does not terminate and re-registration is not required.

When a non-natural person becomes a principal of a CTA as a result of becoming a ten percent beneficial holder, the registration of the CTA is not terminated where:

- (a) Each natural person who would be deemed a principal of the non-natural person has a current Form-8 on file with the National Futures Association ("NFA"); and
- (b) The CTA files with NFA a Form 3-R indicating the name of the non-natural person principal and certain representations regarding the ultimate day-to-day control of the CTA within twenty days of the non-natural person becoming a ten percent beneficial holder.<sup>[4]</sup>

According to your representations, C will become the holder of 100 percent of the shares in D. In connection with this transaction, you represent that D will notify NFA on Form 3-R of the addition of C as a principal and will certify to NFA within twenty days of the underlying transaction the following:

1. The day-to-day management and operating control of D will remain within control of those currently in control of A's operations;
2. The addition of C as a principal will not affect the day-to-day operations of D; and
3. The conversion of A into a wholly-owned subsidiary of C is not being undertaken for the purpose, and will not have the effect, of limiting any liability of A.

You also represent that C, as a trillion-dollar business concern, has a significant number of individuals who satisfy the definition of principal due to their ability to indirectly exercise control over its activities subject to regulation by the Commission. In light of your representations below regarding the activities of the natural persons who would be listed as principals of D, the Division does not believe that the listing of each natural person principal of C is necessary.

Rule 3.32(a)(3) provides that, with respect to natural person principals, the CTA's registration will not terminate upon the addition of a new director(s) provided that a majority of the board of directors remains the same and the CTA undertakes certain actions regarding the listing of the new director(s) as principals. The Division believes that this requirement applies in those instances where a corporate entity restructures into a non-corporate entity, including, but not limited to, a limited liability company.

You represent that a majority of the decision-making body for day-to-day operations for D will remain the same. In particular, you represent that FG, HI, and JK, the existing officers for A, will be joined by LM in the Office of the Chairman. However, the entity that is closest in function to the existing A board, the D manager, will be comprised of existing A officers and an undetermined number of C representatives. Therefore, the majority of the entity continuing the function of the A board may not remain the same. You also represent that D will file with NFA a Form 8-R on behalf of LM and a Form 3-R amending the existing registration form to include LM. In addition, you have represented that D will undertake similar acts with respect to any other individual who becomes a member of the D manager.

Based upon your representations, the Division of Trading and Markets will not recommend that the Commission commence any enforcement action against D for any failure to comply with any of the requirements of Rule 3.32 in connection with the reorganization and merger transaction described above. Any different, changed, or omitted facts or conditions might require us to reach a different conclusion. You must notify us immediately in the event that the management of D's day-to-day operations change in any material way from those represented to us. Further this letter represents the position of this Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any further questions concerning this correspondence, please contact Andrew V. Chapin, an attorney on my staff, at (202) 418-5430.

Very truly yours,

John C. Lawton  
Acting Director

---

[1] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001).

[2] Rule 1.3(u) defines "person" to include individuals, associations, partnerships, corporations, and trusts.

[3] Rule 3.1(a) defines "principal" as "(1) any person including, but not limited to, a sole proprietor, general partner, officer, director, . . . or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission; (2) any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock; and (3) any person who has contributed ten percent or more of the capital. . . ."

[\[4\]](#) See Rule 3.32(a)(2).