

CFTC Letter No. 04-20

July 12, 2004

No-Action

Division of Clearing and Intermediary Oversight

Re: Section 4m(1) – Request for CPO Registration No-Action Position for Co-General Partner of Commodity Pools

Dear :

This is in response to your letter dated April 30, 2004, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By that correspondence, you requested, on behalf of “A”, relief from the requirement to register under Section 4m(1) of the Commodity Exchange Act (the “Act”)^[1] as a commodity pool operator (“CPO”).

Based upon the representations made in your correspondence, we understand the facts to be as follows. “A” is a co-general partner of three limited partnerships (the “Funds”, each of which is operated pursuant to a claim of exemption under Commission Rule 4.7).^[2] The other co-general partner of each of the Funds is the Managing Partner. The Managing Partner is registered as a CPO. “B”, the portfolio manager of each of the Funds, is the Chairman and CEO of the Managing Partner and is listed as a principal and registered as an associated person of the Managing Partner. He is also the managing member of “A”.

The Managing Partner has general responsibility and authority for supervising all aspects of the Funds’ business and operations, and manages the business of the Funds. “A” does not participate in: (1) solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Funds; or (2) the investment, use or disposition of funds or property of the Funds. These activities are the responsibility of the Managing Partner. “A” is a co-general partner of the Funds solely as an entity through which senior investment personnel may invest in the Funds and also participate in the incentive fee allocation.

In support of your request, you represented that neither “A” nor any of its principals is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act, and you have included with your correspondence written cross-acknowledgement by the Managing Partner and “A” of joint and several liability for any violation of the Act or Commission rules committed in connection with their respective activities as a general partner and CPO of the Funds.

Based on the representations made in your correspondence, and consistent with prior positions taken by

the Division, we believe your request has merit.^[3] Accordingly, the Division will not recommend that the Commission commence any enforcement action against “A” based solely upon “A”’s failure to register under Section 4m(1) of the Act as a CPO in connection with acting as a co-general partner of the Funds.

This letter is applicable to “A” solely in connection with the operation of the Funds. It does not excuse “A” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, “A” remains subject to all antifraud provisions of the Act, to the reporting requirement 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, and the no-action position taken herein, are based upon the representations provided to us. Any different, changed or omitted facts or circumstances might render the position taken herein void. You must notify us immediately in the event that the operations or activities of “A”, the Managing Partner or the Funds change in any way from those represented to us. Moreover, this letter represents the position of this Division only and does not necessarily reflect the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

James L. Carley
Director

^[1] 7 U.S.C. §6m(1) (2000).

^[2] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2003).

^[3] You call the Division’s attention to CFTC Staff Letter No. 02-87, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,124 (July 1, 2002), in which the Division took a no-action position with respect to the failure of a Co-CPO to register where, as here, performance of CPO activities was restricted to another (registered) Co-CPO, the unregistered Co-CPO was not involved in commodity interest trading, the Co-CPOs were affiliated and each Co-CPO acknowledged joint and several liability for each other's violations of the Act.