



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 06-10
May 17, 2006
Interpretation
Division of Clearing and Intermediary Oversight

Re: Confirmation that Branch Office Operations
Comply with Commission Regulation 166.4

Dear :

This is in response to your letter dated March 30, 2006, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), on behalf of "A", a registered commodity pool operator and commodity trading advisor. By your letter you advise the Division of certain steps that "A" will take to conduct its New York branch office operations in compliance with Commission Regulation 166.4.¹

Previously, by letter dated October 5, 2005 to "B". of your firm, the Division denied the request of "A" to operate a branch office, "C", as a separately incorporated entity.² In response to that denial, by your letter you represent that:

Going forward, "A" will itself directly establish a New York branch office [the "Branch"] through which it will conduct all the marketing and client support and communication activity previously undertaken by "C". "C" will no longer undertake any marketing or client communication or support activity for "A".

¹ Commission regulations referred to herein are found at 17 CFR Part 1 *et seq.* (2005). Both the Commodity Exchange Act and the Commission's regulations can be accessed through the Commission's Internet website: <http://www.cftc.gov/cftc/cftclawreg.htm>.

² CFTC Staff Letter No. 05-17, to be published in Comm. Fut. L. Rep. (CCH), available on the Commission's Internet website at: <http://www.cftc.gov/tm/letters/04letters/tm04-01.htm>. As the Division explained in its letter, allowing proprietary or separately incorporated branch offices would frustrate a core purpose of Regulation 166.4 – *i.e.*, that Commission registrants be accountable for the acts and omissions of their branch offices.

In further compliance with Regulation 166.4, you represent, among other things, that all marketing and client support personnel working in the Branch will be agents of “A” – such that “A” will be directly responsible as principal for these persons’ actions.

To most expeditiously and efficiently effect the transfer of prior responsibilities to the Branch from “C”, and as is set forth more fully in your letter, “A” intends: (1) to sub-lease or sub-license from “C” the equipment and offices currently leased by “C”; and (2) to transfer to the Branch the personnel who formerly worked for “C”. Thus, you represent that as a result of these changes: (1) all business previously conducted by “C” will now be conducted solely by “A” through its London office or through the Branch; and (2) “C” will become entirely inactive except for the sub-leasing, sub-licensing and personnel arrangements referred to above.

Based upon the foregoing representations, as are set forth more fully in your letter, the Division believes that: (1) upon establishment of the Branch and the transfer of prior “C” responsibilities to it, “A” will be operating in compliance with Regulation 166.4; and (2) “C” will not be required to register in any capacity with the Commission.³

This letter is based upon the representations made in your letter. Any different, changed or omitted material facts or circumstances might render this letter void. In this connection, you must notify us immediately in the event that the operations of “A”, “C” or the Branch change in any material way from those represented to us.

This letter represents the opinion of this division only. It does not necessarily represent the opinion of the Commission or of any other office or division of the Commission. Further, this letter is applicable on a prospective basis only. Nothing in this letter should be construed as limiting in any way the Commission’s ability to proceed against “A” for any past violation of the Act or of the Commission’s regulations issued thereunder.

³ See CFTC Staff Letter No. 04-01 [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,654 (Dec. 30, 2003), available on the Commission’s Internet website at <http://www.cftc.gov/tm/letters/04letters/tm04-01.htm>, in which the Division concluded that where a registered securities broker-dealer (“B/D”) and a registered futures commission (“FCM”) shared a common parent, senior management, office space, support staff, and certain salespeople, the B/D would not also be required to register as an FCM in order to make payment of commissions to the FCM’s associated persons. The Division based its conclusion on the facts that that the B/D essentially would be serving merely as a conduit for commission payments that the FCM originally intended to make and, further, that that the B/D would not be soliciting or accepting customer orders for commodity interest contracts, nor would it be handling customer funds related thereto.

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If you have any questions concerning this correspondence, please contact Barbara S. Gold, Associate Director, at (202) 418-5450.

Very truly yours,

Ananda Radhakrishnan
Director