



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 06-12
June 15, 2006
Interpretation
Division of Clearing and Intermediary Oversight

Re: Section 4m(1); "A" – Request for CPO
Registration Relief for Co-General Partner of a Commodity Pool

Dear :

This is in response to your letter dated April 6, 2006, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with, and emails sent to, Division staff (collectively, the "correspondence"). By your correspondence, you seek relief on behalf of "A" from the requirement to register with the Commission as a commodity pool operator ("CPO") under Section 4m(1) of the Commodity Exchange Act (the "Act")¹ in connection with acting as a co-general partner of (the "Fund").

The general partners of the Fund are "B", a registered CPO, and "A". "C", a registered CPO, is the managing member of both "A" and "B". "B" has all CPO responsibilities for the Fund. "A" will not exercise discretion, supervision or control over, or participate in: (i) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Fund; or (ii) the investment, use or other disposition of funds or property of the Fund. However, as "A" will be a general partner of the Fund, it will be serving as a CPO of the Fund and, absent relief, must register as a CPO.

In support of your request, you explain that "A" has been formed to enable senior personnel of "B", such as the Chief Operating Officer and Chief Investment Officer, to have an ownership interest in the Fund with the tax consequences most favorable to them. In this regard, you state that an ownership stake in the Fund through "A", rather than through "B", would provide more favorable tax consequences to the parties involved because any income derived through "A" would be taxed on a capital gains basis as an incentive-based partnership allocation rather than on an ordinary income basis derived from the management fees earned by "B".

¹ 7 U.S.C. §6m(1)(2000).

In further support of your request, you note that: (1) each individual acquiring an ownership interest in “A” in excess of ten percent of the firm already is a principal of “B” by virtue of their senior management position and, thus, will have submitted fingerprints for clearance with the National Futures Association, and will be listed as a principal of “B”; (2) none, apart from his investment in the Fund, trades in commodity interests or engages in any commodity interest-related activities for others, *e.g.*, trading for or soliciting others to trade; and (3) neither “A” nor any principal thereof is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act. Furthermore, “A” and “B” have submitted to the Division written cross acknowledgments, agreeing to be jointly and severally liable for violations of the Act and Commission regulations in connection with the operation of the Fund. In addition, you have confirmed that “A” will provide to “B” whatever information may be necessary for “B” to include in any Disclosure Document prepared in accordance with Part 4 of the Commission’s regulations.

Based on the representations made in your correspondence, and consistent with prior practice in this area,² the Division will not recommend that the Commission commence any enforcement action against “A” for its failure to register as a CPO under Section 4m(1) of the Act in connection with serving as a co-general partner of the Fund.

The relief issued in this letter does not excuse “A” from compliance with any otherwise applicable requirements contained in the Act or the Commission’s regulations issued thereunder. For example, “A” remains subject to all antifraud provisions of the Act³ and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations, and to all applicable provisions of Part 4, including Regulations 4.20 and 4.41.⁴ Moreover, this relief is solely applicable to “A” in connection with its serving as a CPO of the Fund.

The no-action position taken in this letter is based upon the representations you have made to the Division. Any different, changed, or omitted facts or conditions might render this position void. You must notify the Division immediately in the event that the operations or activities of “A” or the Fund change in any material respect from those as represented to the Division. Further, the no-action position taken in this letter represents the position of the Division only and does not necessarily reflect the views of the Commission or any other office or division of the Commission.

² See, *e.g.*, CFTC Staff Letter 04-20 [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,818 (July 12, 2004).

³ See, *e.g.*, Sections 4b and 4o, 7 U.S.C. §§6b and 6o (2000).

⁴ Commission regulations referred to herein are found at 17 C.F.R. Ch. I (2005).

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If you have any questions concerning this correspondence, please contact Andrew Chapin, an attorney on my staff, at (202) 418-5465.

Very truly yours,

Ananda Radhakrishnan
Director