



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 09-02
May 21, 2009
No-Action
Division of Clearing and Intermediary Oversight

Re: Section 4m(1)

Dear :

This is in response to your letter dated March 16, 2009, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by e-mail messages from "X", of your office, dated March 18 and March 19, 2009, and by telephone conversations between "X" and Division staff (collectively, the "correspondence"). By the 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 serving as the general partner of the Pool, such that "B", a registered CPO, may serve as the Pool's CPO instead.

Based upon the representations made in the correspondence, we understand the facts to be as follows: The Pool was formed as a limited partnership in September 2007. While "A" is its general partner, "A" has delegated all of its management authority to "B", the Pool's investment manager and a registered CPO. As is explained in the correspondence, this structure is intended to facilitate the favorable tax treatment of performance allocations to the owners of "A".²

In support of your request you represent that:

1. "A" is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.

¹ 7 U.S.C. §6m(1) (2006). The Act may be accessed through the Commission's website, at <http://www.cftc.gov/lawandregulation/index.htm>

² The Division takes no position, however, regarding the advisability or legality of this conclusion under federal or state law, or regulations issued by the Department of the Treasury.

2. “A” and “B” are under common ownership and control.³
3. Pursuant to the Pool’s limited partnership agreement and its investment management agreement with “B”, “A” has delegated all of its management authority to “B”.
4. “A” has no employees or other persons acting on its behalf, does not engage in the solicitation of investors for the Pool, does not manage property of the Pool, and does not engage in any other activities that are subject to the Act or Commission regulations.

In further support of your request “A” and “B” have executed and submitted to the Division a written acknowledgement of joint and several liability for any violation by either of them of the Act or the Commission’s regulations in connection with the performance of CPO functions in connection with the Pool.

Based upon the foregoing, and consistent with prior practice in this area,⁴ the Division will not recommend that the Commission commence any enforcement action against “A” for failure to register as a CPO under Section 4m(1) of the Act in connection with serving as the general partner of the Pool. This position is, however, subject to the conditions that: (1) “B” serve as the CPO of the Pool; and (2) “B” remain registered as a CPO.

The relief issued by this letter 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, it remains subject to all antifraud provisions of the Act⁵ and the Commission’s regulations, as well as the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations,⁶ and all applicable provisions of Part 4, including Regulations 4.20 and 4.41. Also, the no-action position taken in this letter is applicable to “A” solely in connection with its serving as the general partner of the Pool and it is prospective only. The Division takes no position with respect to activities conducted prior to the date hereof.⁷

³ “C”, “D” and “E” each own 33.33% of “A” and each own 33.33% of “B”.

⁴ *See, e.g.* CFTC Staff Letter 07-19 [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,697 (September 13, 2007).

⁵ *See, e.g.*, Sections 4b and 4UoU, 7 U.S.C. §§6b and 6UoU.

⁶ Commission regulations may be found at 17 C.F.R. Ch. I (2008). They may be accessed through the Commission’s website, at: [Uhttp://www.cftc.gov/lawandregulation/index.htm](http://www.cftc.gov/lawandregulation/index.htm)

⁷ In this regard, the Division notes that, in adopting Regulation 140.99, which governs the issuance by Commission staff of exemptive, no-action and interpretative letters, the Commission stated that:

This letter, and the position taken herein, are based upon the representations made to us and are subject to compliance with the conditions stated above. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify the Division immediately in the event that the operations or activities of “A”, “B” or the Pool change in any material respect from those as represented to us. Further, this letter and the position taken herein represent the views of this Division only, and do not necessarily represent 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 Peter B. Sanchez, Special Counsel, at (202) 418-5237.

Very truly yours,

Ananda Radhakrishnan
Director

In the absence of extraordinary circumstances, a Letter issued with regard to ongoing activities will be prospective in terms of its coverage (and will not cover past activities or transactions). Thus, a Letter will not ordinarily relieve the person for whose benefit it is issued from the consequences of non-compliance that pre-dates the Letter. Nevertheless, persons (or their counsel) who become aware that their activities are not in compliance with the Act or Commission rules are urged to contact the staff as soon as possible. Although the staff generally reserves the right to refer prior violations for enforcement action in appropriate situations, the good faith demonstrated by efforts to regularize non-complying activities on a “going forward” basis will be carefully considered. 63 Fed. Reg. 68175, at 68176 (Dec. 10, 1998).