



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 09-03
May 21, 2009
No-Action
Division of Clearing and Intermediary Oversight

Re: Section 4m(1)

Dear :

This is in response to your letter dated April 8, 2009, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your e-mails, dated April 10 and April 28, 2009, and by telephone conversations with 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 Pools, 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 Pools were formed as limited partnerships. While "A" is the general partner to the pools, "A" has delegated all of its management authority to "B", each 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.
2. "A" and "B" are under common ownership and control.³

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.

3. Pursuant to the Pools' limited partnership agreements and the 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 Pools, does not manage property of the Pools, 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 and undertaking of joint and several liability for any violation by either of them of the Act or the Commission's regulations⁴ in connection with the performance of CPO functions in connection with the Pools.

Based upon the foregoing, and consistent with prior practice in this area,⁵ 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 Pools. This position is, however, subject to the conditions that: (1) "B" serve as the CPO of the Pools; 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 Act⁶ 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, 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 Pools.

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.

³ "C" and "D" are co-owners of "A" and "B"

⁴ Commission regulations may be found at 17 C.F.R. Ch. I (2008). They may be accessed through the Commission's website, at: <http://www.cftc.gov/lawandregulation/index.htm>

⁵ *See, e.g.* CFTC Staff Letter 07-19 [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,697 (September 13, 2007).

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

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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