



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 09-46
Interpretation
October 20, 2009
Division of Clearing and Intermediary Oversight

Re: Regulation 4.10(d)(1) – Request that a limited partnership comprised of family members not be considered a commodity pool

Dear :

This is in response to your letter dated September 11, 2009 to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“CFTC”). By your letter, you request an interpretation that “A” is not a commodity pool within the meaning and intent of Regulation 4.10(d)(1)¹ and therefore that the general partners of “A”, you and “B”, your spouse (“General Partners”), are not required to register as commodity pool operators (“CPOs”).

Based upon the representations made in your letter, we understand the relevant facts to be as follows. “A” is a family investment partnership that was organized in 1996 to make and hold investments by your immediate family. No persons other than the General Partners have ever held any interest in the partnership. In addition to investments in a variety of other assets, “A” also invests in and trades commodity futures contracts exclusively for its own account. Neither of the General Partners serves as general partner of any other partnership that trades commodity interests.

Recently, “A” has decided to start a commodity trading advisory business and has organized a new company, “C”, to pursue this business activity.² While “C” is registered with

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch. 1 (2009). They can be accessed through the Commission’s website at www.cftc.gov.

² “C” is owned 98% by “A”, and 2% by the General Partners. The only officers are you and your son.

the Commission as a commodity trading advisor (“CTA”), it has yet to have any clients other than “A”.

In support of a finding that “A” would not be a commodity pool, you state:

We do not intend to make any material changes with respect to the proprietary futures trading activity of “A” or the partnership’s family ownership structure. “A” intends to continue trading its futures account only for its own account without any outside funds, will not have any partners other than our immediate family member partners, and will not pay the general partners for serving as general partners and managing the partnership’s assets.

Based upon our review of the representations made in your letter, and consistent with the Division’s prior practice in this area,³ we believe that “A” is not a “pool” within the meaning and intent of Regulation 4.10(d)(1) and, consequently, that the General Partners are not CPOs thereof. This conclusion is not affected by “A” involvement with “C”, because that involvement does not affect “A” own operation.

This letter does not excuse the General Partners from compliance with any other applicable requirements contained in the Commodity Exchange Act (“Act”)⁴ or in the Commission’s regulations issued thereunder. For example, the General Partners remain subject to the antifraud provisions of Section 4b of the Act⁵ and the reporting requirements set forth in Parts 15, 18, and 19 of the Commission’s regulations. Moreover, this letter is applicable to the General Partners solely in connection with their operation of “A”.

The views expressed in this letter are based upon the representations that you have made to us and are strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations, activities or ownership of the General Partners, “A”, or “C” change in any way from those as represented to us. Further, the interpretations provided herein represent the positions of this Division only and do not

³ See, e.g., CFTC Interpretive Letter 00-100 [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,420 (Nov. 1, 2000) (Virginia limited partnership consisting of immediate family members which invests family assets in commodity futures is not a pool); see also CFTC Interpretive Letter No. 96-24, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,653 (Mar. 4, 1996) (Delaware corporation no longer a pool after all non-family member participants withdrew assets).

⁴ 7 U.S.C. §1 *et seq.* The Act can similarly be accessed through the Commission’s website.

⁵ 7 U.S.C. §6b.

necessarily reflect the views of the Commission or any other division or office of the Commission.

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

Very truly yours,

Ananda Radhakrishnan
Director