



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 10-33
No-Action
September 21, 2010
Division of Clearing and Intermediary Oversight

Re: Section 4m(1); Request for CPO Registration No-Action Position for General
Partner of a Commodity Pool

Dear :

This is in response to your letter dated July 19, 2010 to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by a telephone conversation with you on August 4, 2010 and email messages from your colleague, "A", on August 4, 2010 and August 18, 2010 (collectively, the "correspondence"). By the correspondence, you seek relief on behalf of "B" 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 "B" serving as the general partner of the Master Fund, such that "C", a registered CPO, may serve as the Master Fund's CPO instead.

Based upon representations made in the correspondence, we understand the relevant facts to be as follows. The Master Fund is organized as a Cayman Islands exempted limited partnership. While "B" is the general partner, "B" has delegated all of its management authority with respect to the Master Fund to "C", the Master Fund's investment manager and a registered CPO. As explained in your letter, the structure is intended to provide more favorable tax treatment by replacing the incentive fee paid to "C" at the Fund level with an equal incentive allocation to be allocated to "B" at the Master Fund level.²

In support of your request you represent that:

¹ 7 U.S.C. §1 *et seq.* The Act can be accessed through the Commission's website at www.cftc.gov.

² The incentive allocation paid to "B" will be taxed at the long-term capital gains rate whereas an incentive fee paid to "C" would be taxed at the ordinary income tax rate.

1. “B” and “C” are under common ownership and control.³
2. Pursuant to the Master Fund’s limited partnership agreement and its investment management agreement with “C”, “B” has delegated all of its management authority to “C”. “B” does not engage in the solicitation of investors for the Master Fund, nor does it manage property of the Master Fund.
3. “C” is registered with the CFTC as a CPO, and the books and records of “B” are maintained at the offices of “C”.
4. “B” has no employees or other persons acting on its behalf and it does not engage in any other activities that are subject to the Act or Commission regulations.
5. “B” is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.

In further support of your request, “B” and “C” have executed in writing an undertaking to be jointly and severally liable for any violation of the Act or Commission regulations committed by “B” or “C” while acting as general partner and/or CPO of the Master Fund.

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 “B” for failure to register as a CPO under Section 4m(1) of the Act in connection with serving as the general partner of the Master Fund. This position is, however, subject to the conditions that: (1) “C” serves as the CPO of the Master Fund; and (2) “C” remains registered as a CPO.

The relief issued by this letter does not excuse “B” 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 Act 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 4.41.⁵

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. In this regard, you must notify the Division immediately in the event that the operations or activities of “B”, “C”, or the Master Fund change in any material respect from those as represented to us. Further, this letter and the position taken herein represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission.

³ “D” owns 100% of “B” and 99.95% of “C”. “E” owns .05% of “C”.

⁴ See, e.g., CFTC Staff Letter 10-19 [Current Transfer Binder] Comm. Fut. L. Rep. ¶31,565 (May 5, 2010); CFTC Staff Letter 09-45 [Current Transfer Binder] Comm. Fut. L. Rep. ¶31,480 (Aug. 21, 2009).

⁵ CFTC Regulations may similarly be found at www.cftc.gov.

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If you have any questions concerning this correspondence, please contact Zachary J. King, an attorney on my staff, at (202) 418-5364.

Very truly yours,

Ananda Radhakrishnan
Director