



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 10-34
No-Action
September 21, 2010
Division of Clearing and Intermediary Oversight

Re: Section 4m(1) – Request for CPO Registration Relief

Dear :

This is in response to your letter dated June 30, 2010, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”), as supplemented by your e-mail messages sent July 6, 2010, July 20, 2010 and August 12, 2010 and 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 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 is organized as a limited partnership. While “A” is its general partner, “A” has delegated all of its management authority with respect to the Pool to “B”, the Pool's investment manager and a registered CPO. As is explained in the correspondence, this structure is intended to facilitate a more efficient business structure, where “B” manages several business lines of “A” and “B” ownership, including the Pool.

In support of your request you represent that:

1. “A” and “B” are under common ownership and control.²

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>. The Commission's regulations similarly may be accessed through the Commission's website at the aforesaid site.

² Specifically, the common voting shares of each “A” and “B” are wholly-owned and controlled by “C”, “D”, “E” and “F”.

2. "A" is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.
3. Pursuant to the Pool's limited partnership agreement and its investment management agreement with "B", "A" as the Pool's general partner has delegated all of its management authority to "B".
4. "A" does not engage in the solicitation of investors for the Pool, nor does it manage property of the Pool.
5. "B" is registered with the CFTC as a CPO, and has been so registered since 2009.
6. Although "A" is the general partner of the Pool, "A" 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 CFTC regulations.
7. "A" and "B" have undertaken joint and several liability for any violation of the Act or Commission regulations in connection with the operation of the Pool, and the books and records of "A" are maintained at the offices of "B".³

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" serves as the CPO of the Pool; and (2) "B" remains 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, and all applicable provisions of Part 4, including Regulations 4.20 and 4.41.

³ You enclosed with your correspondence an executed copy of this undertaking.

⁴ See, *e.g.*, CFTC Staff Letter 10-19 (May 5, 2010), which may be accessed on the Commission's website at <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/10-19.pdf>. This letter provided similar no-action relief to facilitate the favorable tax treatment of performance allocations.

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

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 Jacob Preiserowicz, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Ananda Radhakrishnan
Director