



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC Letter No. 11-01  
No-Action  
March 22, 2011  
Division of Clearing and Intermediary Oversight

Re: Section 4m(1) – Request for CPO Registration Relief for Affiliated General Partners of Several Commodity Pools

Dear :

This is in response to your letter dated January 10, 2011 to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), as supplemented by a telephone conversation between you and Division staff on January 27, 2011, an email from you on February 23, 2011, and a telephone conversation with your associate, “A”, on February 25, 2011 (collectively, the “correspondence”). By the correspondence, you seek relief 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”)<sup>1</sup> on behalf of: (i) “B”, in connection with serving as the general partner of “C”; and (ii) “D”, in connection with serving as the general partner of “E”, such that “F” may serve as the CPO of each of the “C” and “E”.

Based upon representations made in the correspondence, we understand the relevant facts to be as follows. “F” is registered as a CPO with the Commission. “F” has entered into certain arrangements with “B” and “D” in order to achieve more favorable tax treatment through the allocation of performance fees to “B” and “D”.<sup>2</sup>

In support of your request you represent that:

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<sup>1</sup> 7 U.S.C. §1 *et seq.* The Act can be accessed through the Commission’s website at [www.cftc.gov](http://www.cftc.gov).

<sup>2</sup> 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.

1. “B” and “D” are not subject to statutory disqualification under Section 8a(2) or 8a(3) of the Act.
2. “F”, “B”, and “D” are under common ownership and control.<sup>3</sup>
3. Pursuant to the “C’s” investment management agreement with “F”, the investment management functions and investment discretion with respect to the “C” have been delegated to “F”. In addition, the “C’s” general partner, “B”, does not engage in the solicitation of investors for the “C” or manage any of the “C’s” property.
4. Pursuant to the “E’s” investment management agreement with “F”, the investment management functions and investment discretion with respect to the “E” have been delegated to “F”. In addition, the “E’s” general partner, “D”, does not engage in the solicitation of investors for the “E” or manage any of the “E’s” property.
5. All books and records of the “C” and the “E” are maintained at the offices of “F”.
6. “B” and “D” have no employees or other persons acting on their respective behalf, and do not perform any functions or provide any services that are subject to the Act or Commission’s regulations.

In further support of this request “B” and “D” have each entered into an acknowledgement with “F” to be jointly and severally liable for any violation of the Act or Commission’s regulations, to the extent that such violation is applicable to activities as CPOs in connection with the operation of “B” and “D’s” respective funds.

Based upon the foregoing, and consistent with prior practice in this area,<sup>4</sup> the Division will not recommend that the Commission commence any enforcement action against “B” or “D” for failure to register as a CPO under Section 4m(1) of the Act in connection with serving as a general partner of the “C” and “E”, respectively. This position is, however, subject to the conditions that: (1) “F” serves as the CPO of the “C” and “E”; and (2) “F” remains registered as a CPO.

The relief issued by this letter does not excuse “B” or “D” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, “B” and “D” remain 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

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<sup>3</sup> “G”, directly or indirectly, owns 100% of the general partners of “F”, “B”, and “D”.

<sup>4</sup> See, e.g., CFTC Staff Letter 10-33 [Current Transfer Binder] Comm. Fut. L. Rep. ¶31,523 (Sep. 21, 2010).

15, 18 and 19 of the Commission's regulations, and all applicable provisions of Part 4, including Regulations 4.20 and 4.41.<sup>5</sup>

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 "F", "B", "D", the "C", or the "E" 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.

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

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<sup>5</sup> Commission Regulations may similarly be found at [www.cftc.gov](http://www.cftc.gov).