



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer
and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 12-27
Interpretation
October 5, 2012
Division of Swap Dealer and Intermediary Oversight

Re: Regulation 4.10(d)(1)
Request for interpretation that family investment entity is not a commodity pool

Dear :

This is in response to your letter dated July 12, 2012, to the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), as supplemented by your letter, dated July 30, 2012, and your email messages, sent on July 30, 2012 and August 14, 2012 (collectively, the "correspondence"). By the correspondence, you request an interpretation that "A" is not a commodity pool within the meaning and intent of Regulation 4.10(d), and that, accordingly, you are not required 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 your serving as the managing member of "A".

Based upon representations made in the correspondence, we understand the pertinent facts to be as follows. "A" is a family-owned, Delaware limited liability company that was formed in 2006 for the sole purpose of making investments in futures and options on futures on behalf of you and your cousin, "B" (the "Members").² No person other than the Members has ever contributed any capital to or held any interest in "A". In support of your request, you represent that "A" "has never been used to provide advice or solicit investments, receive funds, securities or property from other parties." In further support of your request, you state that "[A's] business model has not changed since inception and will not change."

¹ 7 U.S.C. §6m(1) (2006). The Commission's regulations are found at 17 CFR Part 1 *et seq.* (2012). Both the Act and the Commission's regulations may be accessed through the Commission's Web site at <http://www.cftc.gov>.

² Although "B" is also a managing member of "A", he is not involved in its day-to-day management.

Based on the representations in the correspondence, and consistent with 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 you are not a CPO thereof.

The letter does not excuse you from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations. For example, you remain subject to all antifraud provisions of the Act⁴ and the Commission’s regulations, as well as the reporting requirements for traders in the Commission’s regulations.

The views expressed in this letter are based upon the representations you have made to us and are strictly limited to those representations. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations, activities or ownership of “A” changes in any way from as represented to us. Further, the interpretations provided in this letter represent the positions 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 further questions concerning this correspondence, please contact Israel J. Goodman, an attorney on my staff, at (202) 418-6715.

Very truly yours,

Gary Barnett
Director

³ See, e.g., CFTC Staff Letter 10-25 (Jun. 25, 2010)(Commission staff found that a two-member limited liability company whose members were an investment professional and a family trust was not a “pool” under Regulation 4.10(d)(1)); CFTC Staff Letter 09-46 (Oct. 20, 2009)(Commission staff found that a family investment partnership of which the only partners were an individual and his spouse was not a “pool” under Regulation 4.10(d)(1)); and CFTC Staff Letter 00-100 (Nov. 1, 2000)(Commission staff found that a limited partnership whose limited partners were all family members of the sole shareholder of the general partner was not a “pool” under Regulation 4.10(d)(1)). These letters may be accessed on the Commission’s Web site.

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