



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer  
and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 13-18  
No-Action  
March 13, 2013  
Division of Swap Dealer and Intermediary Oversight

Re: Section 4m(1)  
Request for Commodity Pool Operator Registration Relief

Dear :

This is in response to your letter dated January 4, 2013, to the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), as supplemented by the email message of your counsel, "A", sent February 26, 2013 (collectively, the "correspondence"). By the correspondence, you seek relief on behalf of "B I", the general partner of "Pool 1", and "B II", the general partner of "Pool 2" (together with Pool 1, the "Pools") 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> such that "C", a registered CPO,<sup>2</sup> may serve as the CPO of the Pools instead.

Based upon the representations made in the correspondence, we understand the pertinent facts to be as follows: Each of the Pools is organized as a limited partnership. While "B I" is Pool 1's general partner, and "B II" is Pool 2's general partner, each of the "Bs" has delegated all of its management authority with respect to the Pools to "C". As explained in the correspondence, this structure is intended to facilitate the favorable tax treatment of performance allocations to the "Bs".<sup>3</sup>

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<sup>1</sup> 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>.

<sup>2</sup> "C" has been registered as a CPO since January 2013. "C" previously relied on an exemption from registration as a CPO under Commission Regulation 4.13(a)(3) with respect to Pool 1. With respect to Pool 2, "C" did not previously register as a CPO because its trading in commodity interests with respect to Pool 2 was limited to swaps.

<sup>3</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.

In support of your request you represent that:

1. The “Bs” and “C” are under common ownership and control.<sup>4</sup>
2. Each of the “Bs” has delegated all of its investment management authority to “C”. The “Bs” do not engage in the solicitation of investors for the Pools, nor do they manage property of the Pools.
3. The books and records of each of the “Bs” are maintained at the offices of “C”
4. None of the “Bs” has any employees or other persons acting on its behalf, and none of the “Bs” engages in any other activities that are subject to the Act or the Commission’s regulations.<sup>5</sup>
5. None of the “Bs” is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.

In further support of your request, the “Bs” and “C” have each acknowledged in writing an undertaking to be jointly and severally liable for any violation of the Act or Commission regulations.

Based on the foregoing, and consistent with prior practice in this area,<sup>6</sup> the Division will not recommend that the Commission commence any enforcement action against “B I” or “B II” for failure to register as a CPO under Section 4m(1) of the Act in connection with serving, respectively, as the general partner of Pool 1 and Pool 2. This position is, however, subject to the conditions that: (1) “C” serves as the CPO of the Pools; and (2) “C” remains registered as a CPO.

The relief issued by this letter does not excuse the “Bs” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations. For example, the “Bs” remain subject to all antifraud provisions of the Act<sup>7</sup> and the Commission’s regulations, as well as to the reporting requirements for traders in the Commission’s regulations and all applicable provisions of Part 4, including Regulations 4.20 and 4.41.

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<sup>4</sup> Specifically, you are the managing member and own 100% of the “Bs” and “C”.

<sup>5</sup> Based on the representations in the correspondence, then, none of the “Bs” would be acting as a CTA with respect to the Pools and would not be required to register as such.

<sup>6</sup> See, e.g., CFTC Staff Letter 12-24 (Sept. 24, 2012); CFTC Staff Letter 11-01 (Mar. 22, 2011); and CFTC Staff Letter 10-33 (Sept. 21, 2010), which may be accessed on the Commission’s Web site.

<sup>7</sup> 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. In this regard, you must notify the Division immediately in the event that the operations or activities of “B I”, “B II”, “C” or either of the Pools change in any material respect from those 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 further questions concerning this correspondence, please contact Israel J. Goodman, Special Counsel, at (202) 418-6715.

Very truly yours,

Gary Barnett  
Director  
Division of Swap Dealer and  
Intermediary Oversight