



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 17-48
No-Action
August 2, 2017
Division of Swap Dealer and Intermediary Oversight

**Re: No-action Relief from Registration as a CPO and/or a CTA for
“A”, the operator of “B”, and Subsidiaries**

Dear :

This letter is in response to your letter dated June 27, 2017, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). You request on behalf of “A”, the commodity pool operator (“CPO”) of “B” and its subsidiaries (“Subsidiaries”) confirmation that the Division would not recommend enforcement action against “A” for failure to register as either a CPO or commodity trading advisor (“CTA”) with respect to its activities managing “B”.

Based upon the representations in your letter, we understand the relevant facts to be as follows. “B” owns working interests, mineral interests, and overriding royalty interests in crude oil and natural gas producing and non-producing properties in certain counties in Montana, North Dakota, and Oklahoma. When “B” acquires crude oil and natural gas interests, “B” will concurrently enter into over-the-counter (“OTC”) swap transactions with the intention of hedging its exposure to commodity price risk. Because of the inclusion of swaps as a commodity interest within the definition of a commodity pool under Section 1a(10) of the Commodity Exchange Act, “B” and/or its Subsidiaries may meet the definition of a commodity pool.

You state that “B’s” OTC swaps generally have a notional value of approximately “X” percent of proved producing reserves and are intended to reduce the risk posed to “B” and the Subsidiaries by fluctuations in crude oil and natural gas pricing. You further state that the terms and conditions of the OTC swaps are consistent with those generally available in the traditional swaps market and that “B” and its Subsidiaries do not intend to trade in and out of the swaps to generate profits or mitigate losses. You represent that the OTC swap positions will not be established, held, altered, or terminated for the purpose of seeking to generate investment income and that the swaps will not introduce any new risks to “B” other than counterparty credit risk associated with the swaps.

You state that all OTC swaps, including those intended to hedge risks incurred by the Subsidiaries, are currently held by “B”. You state that in the future “A” may determine that it would be more appropriate for a Subsidiary to enter into the swap transaction rather than “B” for reasons wholly driven by the business needs of the Subsidiary, “B”, or the “B” complex of entities as a whole.

RE: No-action Relief from CPO/CTA Registration for “A”, the operator of “B”, and Subsidiaries

Page 2

August 2, 2017

With respect to “A”, you state that the advisory activities of “A” are limited to the OTC swaps that are intended to hedge the commodity price risk of “B” and its Subsidiaries. You state that both “A” and “B” will implement risk management policies and procedures reasonably designed to ensure compliance with the terms of the relief provided by this letter and that such policies and procedures will also be consistent with the restrictions on “B’s” swap-related activities in credit agreements with its lenders. You also state that if the Commission adopts a final position limits rule applicable to energy derivatives, the swaps will qualify as *bona fide* hedging positions (as defined in the proposed rule) that are exempt from position limits.

Based on the representations in your correspondence, the Division will not recommend that the Commission take enforcement action against “A” as the CPO for “B” and its Subsidiaries for failure to register as such, nor will it recommend that the Commission take enforcement action against “A” for failure to register as a CTA with respect to the commodity trading advice that it provides to “B” and its Subsidiaries, provided that “B’s” and its Subsidiaries’ use of swaps satisfies the following conditions:

1. The swap(s) will have the effect of reducing risk relative to the risk of the unhedged position;
2. The swap(s) position cannot be established, held, altered or terminated for the purpose of speculation or trading;
3. The swap(s) will only hedge risks inherent in the physical assets of “B” and its Subsidiaries, and not risks arising from the arrangement by which the assets are held or financed;
4. The swap(s) will not introduce any new risks to “B” or its Subsidiaries other than counterparty risk;
5. The terms and conditions of the swap(s) are consistent with those generally available in the traditional swaps market; and
6. “A”, “B”, and its Subsidiaries will have employed reasonable risk management policies and procedures to reasonably ensure compliance with the terms of this letter including periodic testing to confirm ongoing compliance with respect to any amendments to the swap(s) or the structure.

Based upon the facts provided to the Division in your correspondence, you have represented that the swaps engaged in by “B” and its Subsidiaries satisfy the aforementioned conditions.

This letter, and the positions 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. The relief issued by this letter does not excuse the affected persons from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. This letter does not create or confer any rights for or obligations on

RE: No-action Relief from CPO/CTA Registration for “A”, the operator of “B”, and Subsidiaries

Page 3

August 2, 2017

any person or persons subject to compliance with the Commodity Exchange Act that bind the Commission or any of its other offices or divisions. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void. The Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided in this letter, in its discretion.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283.

Very truly yours,

Eileen T. Flaherty
Director
Division of Swap Dealer
and Intermediary Oversight