



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000

Division of Swap Dealer and
Intermediary Oversight

Matthew B. Kulkin
Director

May 7, 2019

RE: Request for No-Action Relief from the Requirement to Register as a Commodity Pool Operator under Section 4m(1) of the Commodity Exchange Act

Dear :

This is in response to your letter (the “Correspondence”) dated December 13, 2018, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the letter, you request on behalf of “A” relief from the requirement to register with the Commission as a commodity pool operator (“CPO”) under section 4m(1) of the Commodity Exchange Act (“CEA” or “Act”),¹ in connection with its role as trustee of the “B” and the “C” (each, a “Pool” and collectively, the “Pools”). Instead, you state that “A” will delegate its responsibilities as CPO of the Pools to “D”, pursuant to the applicable requirements of CFTC Staff Letter No. 14-126 (“Letter 14-126”),² except for criterion 6 therein.

Background

On May 12, 2014, the Division issued CFTC Staff Letter No. 14-69 (“Letter 14-69”),³ which was in response to numerous requests asking that the Division provide no-action relief for failure to register as a CPO under section 4m(1) of the Act, if another person would serve as the registered CPO of the commodity pool at issue in lieu of the requesting CPO. Letter 14-69 developed a standardized, streamlined approach pursuant to which the Division addressed these types of relief requests, and set forth certain requirements that were based on prior staff no-action letters.

¹ 7 U.S.C. 6m(1). The Act is found at 7 U.S.C. 1, *et seq.* (2016). It, and the Commission’s regulations, may be accessed through the Commission’s website, <https://www.cftc.gov>.

² CFTC Staff Letter No. 14-126 (Oct. 15, 2014), *available at* <https://www.cftc.gov/sites/default/files/csl/pdfs/14/14-126.pdf> (last retrieved April 9, 2019). This and the other Commission staff letters referenced herein are also available on the Commission’s website: <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

³ CFTC Staff Letter No. 14-69 (May 12, 2014), *available at* <https://www.cftc.gov/sites/default/files/csl/pdfs/14/14-69.pdf> (last retrieved April 9, 2019).

RE: “A” and “D” Delegation

Page 2

May 7, 2019

On October 15, 2014, the Division issued Letter 14-126, which was a further refinement of the relief addressed in Letter 14-69. Like Letter 14-69, Letter 14-126 provided no-action relief for failure to register as a CPO under CEA Section 4m(1), if another person would serve as the registered CPO of the commodity pool at issue in lieu of the requesting CPO. The circumstances and conditions for relief under Letter 14-126 were, in purpose and effect, the same as those set forth in Letter 14-69, with the exception of certain added clarifications. One of those conditions was that, if the Delegating CPO⁴ and the Designated CPO⁵ are each a non-natural person, then one such CPO controls, is controlled by, or is under common control with the other CPO. The relief provided by Letter 14-126 was self-executing, and no notice or claim needed to be filed, in order to, in part, ease the administrative burdens of Letter 14-69 on the Division. In issuing Letter 14-126, the Division noted that there may be other CPO delegation situations involving circumstances in which CPO registration no-action relief may be warranted that are not addressed by Letter 14-126, and indicated that it intends to continue to evaluate requests submitted pursuant to Commission Regulation 140.99⁶ for CPO registration no-action relief from persons who fall outside the scope of Letter 14-126.⁷

Requested Relief and Legal Analysis

Based on the representations made in the Correspondence, we understand the relevant facts to be as follows. “D”, the Designated CPO, has its principal place of business in the State of New York, is organized as a Delaware limited partnership, and is subject to U.S. federal and state regulation. “D” is registered with the Commission as a CPO and has been a member of the National Futures Association (“NFA”) in such capacity since January 1, 2013. “D” and its affiliates have approximately \$ of assets under management, as of December 1, 2018.

The Pools are organized as unit trusts under the laws of the Cayman Islands and operate as private investment funds. “A”, the Delegating CPO, is a Cayman Islands limited company and an affiliate of the Pools’ administrator, “E”. “A” serves as the trustee of each of the Pools.

Additionally, you state that “A” and “D” satisfy all of the applicable criteria in Letter 14-126, except for criterion 6 therein, which states that, “[i]f the Delegating CPO and the Designated CPO are each a non-natural person, then one such CPO controls, is controlled by, or is under common control with the other CPO.” In particular, you represent the following:

- Pursuant to a legally binding document, “A” has delegated to “D” all of its CPO rights and obligations, including investment management authority, with respect to the Pools.

⁴ This term is defined in Letter 14-126.

⁵ *Id.*

⁶ 17 CFR 140.99.

⁷ Letter 14-126, p. 2. The Division indicated the same following the issuance of Letter 14-69 as well.

RE: “A” and “D” Delegation

Page 3

May 7, 2019

- “A”, including any of its employees or other persons acting on its behalf, does not participate, and has never participated, in the solicitation of participants for the Pools.
- “A”, including any of its employees or other persons acting on its behalf, does not manage, and has never managed, any property of the Pools (beyond that which is required for the fulfillment of its role as a fiduciary to the Pools).
- “A” is not subject to a statutory disqualification under CEA Sections 8a(2) or 8a(3).
- There is a business purpose for “D” being a separate entity from “A” that is not solely to avoid registration by “A” under the Act and the Commission’s regulations.
- The books and records of “A” with respect to the Pools are maintained by “D” in the United States in accordance with Commission Regulation 1.31.⁸
- “A” and “D” have executed a legally binding document whereby each undertakes to be jointly and severally liable for any violation of the CEA or the Commission’s regulations by the other in connection with the operation of the Pools.

Relief Granted

Based upon the representations made in the Correspondence, the Division will not recommend that the Commission commence any enforcement action against “A” for failure to register as a CPO under CEA Section 4m(1) in connection with its role with respect to the Pools. This position is subject to all of the representations you have made in connection with your relief request. Although “D” and “A” are not under common control, and neither “D” nor “A” controls the other, they will remain jointly and severally liable for any violations of the Act or Commission regulations. Further, the entity to which “A” has delegated, “D”, has itself been registered as a CPO for over six years, will maintain all books and records for the Pools in the United States, and is affiliated with several other registered CPO and commodity trading advisor affiliates, with whom “D” manages approximately \$ in assets.

The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Act or in the Commission regulations issued thereunder. Further, this letter, 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 herein in its discretion. Finally, 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.

⁸ 17 CFR 1.31.

RE: “A” and “D” Delegation

Page 4

May 7, 2019

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

Matthew B. Kulkin
Director
Division of Swap Dealer and
Intermediary Oversight