



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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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, dated February 19, 2019, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or the “CFTC”). In the letter, you request, on behalf of “A” that “A” receive relief from the requirement to register with the Commission as a commodity pool operator (a “CPO”) under section 4m(1) of the Commodity Exchange Act (the “Act”)<sup>1</sup> in connection with its role as manager of “B” (the “Pool”). Instead, you state that “A” will delegate certain of its responsibilities as the CPO of the Pools to “C” pursuant to the applicable requirements of CFTC Staff Letter No. 14-126 (“Letter 14-126”),<sup>2</sup> except for criterion 6 therein as discussed below.

**Background**

On May 12, 2014, the Division issued CFTC Staff Letter No. 14-69 (“Letter 14-69”),<sup>3</sup> 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 (the “Designated CPO”) in lieu of the requesting CPO (the “Delegating CPO”). Letter 14-69 developed a standardized, streamlined approach

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<sup>1</sup> 7 U.S.C. §6m(1). The Act is found at 7 U.S.C. §§1 et seq. (2012). It may be accessed through the Commission’s website, [www.cftc.gov](http://www.cftc.gov).

<sup>2</sup> 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 May 3, 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>.

<sup>3</sup> 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 May 3, 2019).

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.

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 section 4m(1) of the Act, if another person would serve as the registered Designated CPO of the commodity pool at issue in lieu of the Delegating 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 criterion 6, which provides if the Delegating CPO<sup>4</sup> and the Designated CPO<sup>5</sup> 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 140.99<sup>6</sup> for CPO registration no-action relief from persons who fall outside of the scope of Letter 14-126.<sup>7</sup>

### **Requested Relief and Legal Analysis**

Based on the representations made in your letter and other email and telephone correspondence (the “Correspondence”), we understand the facts to be as follows. “C” serves as the investment manager to each of the Pools and has been registered as a commodity trading advisor since October 13, 1999. “C’s” operations are based in London, in the United Kingdom, and all of its books and records are kept in the United Kingdom. Currently, “C” has approximately \$ in assets under management.

“A” is an entity that is organized in the Cayman Islands and its operations are based out of the Cayman Islands. The Pool is a limited liability company under the laws of the Delaware.

In addition, you state that “A” and “C” satisfy all of the applicable criteria in Letter 14-126, except for criterion 6. In particular, you represent the following:

- Pursuant to a legally binding document, “A” has delegated to “C” all of its investment management authority with respect to the Pools.

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<sup>4</sup> This term is defined in Letter 14-126.

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 140.99.

<sup>7</sup> Letter 14-126, page 2. The Division indicated the same following the issuance of Letter 14-69 as well.

- “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.
- “A” is not subject to statutory disqualification under section 8a(2) or 8a(3) of the Act.
- There is a business purpose for “A” being a separate entity from “C” that is not solely to avoid registration by the “A” under the Act and the Commission’s regulations.
- The books and records of “A” with respect to the Pools are maintained by “C” in the United Kingdom in accordance with Commission regulation 1.31.<sup>8</sup>
- “A” and “C” have executed a legally binding document whereby each undertakes to be jointly and severally liable for any violation of the Act 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 section 4m(1) of the Act in connection with its role with respect to the Pool. This position is subject to all of the representations that you have made in connection with your relief request. Although “A” and “C” are not under common control and neither “A” nor “C” controls the other, they will remain jointly and severally liable for any violations of the Act or Commission regulations. Furthermore “C”, the entity to which “A” has delegated its CPO functions has been registered as a CPO for more than 18 years, has \$ in assets under management, and will maintain all books and records in the United Kingdom in accordance with Commission regulations 1.31 and 4.23.<sup>9</sup>

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, 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 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.

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<sup>8</sup> 17 CFR 1.31.

<sup>9</sup> 17 CFR 1.31; 17 CFR 4.23.

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Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Peter Sanchez, Special Counsel, at 202-418-5237.

Very truly yours,

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