



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5430  
Facsimile: (202) 418-5547  
*aradhakrishnan@cftc.gov*

Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC letter No. 07-19  
September 13, 2007  
No-Action  
Division of Clearing and Intermediary Oversight

Re: Section 4m(1) – Request for CPO Registration Relief for the  
General Partner of a Commodity Pool

Dear :

This is in response to your letter dated July 23, 2007, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), as supplemented by your e-mail messages dated August 6, August 7, August 21 and August 26, 2007, and by telephone conversations with Division staff (collectively, the “correspondence”). By the correspondence, you seek relief on behalf of “A” 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> in connection with serving as the general partner of the Pool, such that “B”, a registered CPO, may serve as the Pool’s CPO instead.

Based upon the representations made in the correspondence, we understand the facts to be as follows: “B” has been registered with the Commission as a CPO and as a commodity trading advisor (“CTA”) since 2006. When the Pool was formed as a limited partnership, in 2005, “B” was the general partner.<sup>2</sup> In 2006, “A”, “B” and their respective general partners were re-organized;<sup>3</sup> “A” replaced “B” as the Pool’s general partner; and “A” and “B” executed a

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<sup>1</sup> 7 U.S.C. §6m(1) (2000). The Act may be accessed through the Commission’s website, at <http://www.cftc.gov/lawandregulation/index.htm>

<sup>2</sup> “B” did not solicit participants for the Pool prior to “B’s” registration as a CPO, and the Pool had no participants (other than “B” and principals of “B”) during that time.

<sup>3</sup> As is explained more fully in the correspondence, the reorganization was done to support the conclusion of favorable tax treatment of investment returns and performance allocations to the owners of “A”. 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.

written undertaking of joint and several liability for any violation by either of them of the Act or the Commission's regulations.<sup>4</sup>

In support of your request, you note that:

1. "A" and "B" are under common ownership and control.<sup>5</sup>
2. Pursuant to the Pool's limited partnership agreement and its investment management agreement with "B", "A" as the Pool's general partner has delegated all of its management authority to "B". "A" does not engage in the solicitation of investors for the Pool, nor does it manage property of the Pool.
3. "B" is currently registered as a CPO, and has been so registered since 2006.
4. Although "A" is the general partner of the Pool, it has no employees or other persons acting on its behalf, and it does not engage in any other activities that are subject to the Act or Commission regulations.
5. "A" and "B" have undertaken joint and several liability for any violation of the Act or Commission regulations, and the books and records of "A" are maintained at the offices of "B".
6. "A" is not subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act.<sup>6</sup>

Based upon the foregoing, and consistent with prior practice in this area,<sup>7</sup> the Division will not recommend that the Commission commence any enforcement action against "A" for

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<sup>4</sup> Commission regulations may be found at 17 C.F.R. Ch. I (2007). They may be accessed through the Commission's website, at: <http://www.cftc.gov/lawandregulation/index.htm>

"A" is also the general partner of another pool, "C", with respect to the operation of which "A" has filed a notice of claim of exemption from CPO registration under Regulation 4.13(a)(4).

<sup>5</sup> The sole member and manager of the general partner of each of "A" and "B" is "D". The limited partners of each of "A" and "B" are the "E" Trust, the "F" Trust and the "G" Trust, all of which are trusts established for the benefit of "D's" family members.

<sup>6</sup> 7 U.S.C. §12a(2) or §12a(3) (2000).

<sup>7</sup> See, e.g., CFTC Staff Letter No. 06-12 [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,265 (Jun. 15, 2006) (CPO registration relief issued to the general partner of a commodity pool organized as a limited partnership where another general partner (registered as a CPO) conducted all CPO activities, the unregistered general partner was not involved in commodity interest trading, the registered and unregistered general partners were affiliated, and each acknowledged joint and several liability for the other's violations of the Act); and CFTC Staff Letter No. 02-87 [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,124 (Jul. 1,

failure to register as a CPO under Section 4m(1) of the Act in connection with serving as the general partner of the Pool. This position is, however, subject to the conditions that: (1) “B” serve as the CPO of the Pool; and (2) “B” remain registered as a CPO.

The relief issued by this letter does not excuse “A” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, it remains subject to all antifraud provisions of the Act<sup>8</sup> and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations, and to all applicable provisions of Part 4, including Regulations 4.20 and 4.41. Also, the relief provided by this letter is applicable to “A” solely in connection with its serving as the general partner of the Pool and it is prospective only. The Division takes no position with respect to activities conducted prior to the date hereof.<sup>9</sup>

This letter, and the relief provided 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. You must notify the Division immediately in the event that the operations or activities of “A”, “B” or the Pool change in any material respect from those as represented to us. Further, this letter and the relief provided 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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2002) (CPO registration relief issued to the general partner of a commodity pool organized as a limited partnership, where CPO activities were conducted exclusively by a registered CPO, the (unregistered) general partner was not involved in commodity interest trading, the registered CPO and the general partner were affiliated and each acknowledged joint and several liability for the other’s violations of the Act).

<sup>8</sup> See, e.g., Sections 4b and 4o, 7 U.S.C. §§6b and 6o (2000).

<sup>9</sup> In this regard, the Division notes that, in adopting Regulation 140.99, which governs the issuance by Commission staff of exemptive, no-action and interpretative letters, the Commission stated that:

In the absence of extraordinary circumstances, a Letter issued with regard to ongoing activities will be prospective in terms of its coverage (and will not cover past activities or transactions). Thus, a Letter will not ordinarily relieve the person for whose benefit it is issued from the consequences of non-compliance that pre-dates the Letter. Nevertheless, persons (or their counsel) who become aware that their activities are not in compliance with the Act or Commission rules are urged to contact the staff as soon as possible. Although the staff generally reserves the right to refer prior violations for enforcement action in appropriate situations, the good faith demonstrated by efforts to regularize non-complying activities on a “going forward” basis will be carefully considered. 63 Fed. Reg. 68175, at 68176 (Dec. 10, 1998).

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If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

Ananda Radhakrishnan  
Director