



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 09-44
No-Action
August 21, 2009
Division of Clearing and Intermediary Oversight

Re: Section 4m(1) – Request for CPO Registration Relief

Dear :

This is in response to your letter dated July 8, 2009, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”), as supplemented by e-mail messages from your counsel, “A”, sent July 27 and August 13, 2009 (collectively, the “correspondence”). By the correspondence, you seek relief on behalf of “B”¹ 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”)² in connection with serving as the general partner of the Pool, such that “C”, 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: The Pool is organized as a limited partnership. While “B” is its general partner, “B” has delegated all of its management authority to “C”, the Pool’s investment manager and a registered CPO. As is explained in the correspondence, this structure is intended to facilitate the favorable tax treatment of performance allocations to the owners of “B”.³

In support of your request you represent that:

¹ You are the managing member of “D”, which is the general partner of “B”.

² 7 U.S.C. §6m(1) (2006). The Act may be accessed through the Commission’s website, at <http://www.cftc.gov/lawandregulation/index.htm>. The Commission’s regulations are found at 17 CFR Chapter I (2009) and similarly may be accessed through the Commission’s website at the aforesaid site.

³ 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.

1. “B” and “C” are under common ownership and control.⁴
2. Pursuant to the Pool’s limited partnership agreement and its investment management agreement with “C”, “B” has delegated all of its management authority to “C”. “B” does not engage in the solicitation of investors for the Pool, nor does it manage property of the Pool.
3. “C” is registered with the CFTC as a CPO, and the books and records of “B” will be maintained at the offices of “C”.
4. “B” 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 CFTC regulations.
5. “B” is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.

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

Based upon the foregoing, and consistent with prior practice in this area,⁵ the Division will not recommend that the Commission commence any enforcement action against “B” for 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) “C” serve as the CPO of the Pool; and (2) “C” remain registered as a CPO.

The relief issued by this letter does not excuse “B” 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 Act⁶ and the Commission’s regulations, as well as the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations, and all applicable provisions of Part 4, including Regulations 4.20 and 4.41.

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. You must notify the Division immediately in the event that the operations or activities of “B”, “C”, or the Pool change in any material respect from those as represented to us. Further, this letter and the

⁴ “E” is the managing member, and the sole principal, of each of “B” and “C”.

⁵ *See, e.g.*, CFTC Staff Letter 09-02 (May 21, 2009), which may be accessed on the Commission’s website at <http://www.cftc.gov/stellent/groups/public/@lrllettergeneral/documents/letter/09-02.pdf>.

⁶ *See, e.g.*, Sections 4b and 4o, 7 U.S.C. §§6b and 6o.

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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 questions concerning this correspondence, please contact Barbara S. Gold, Associate Director, at (202) 418-5450.

Very truly yours,

Ananda Radhakrishnan
Director