



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC Letter No. 10-03  
No-Action  
December 18, 2009  
Division of Clearing and Intermediary Oversight

Re: Section 4m(1)

Dear :

This is in response to your letter dated June 9, 2009, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your letters dated August 14, 2009, August 26, 2009 and December 1, 2009, your facsimile transmission dated July 1, 2009, and your email dated December 7, 2009 (collectively, the "correspondence"). By the correspondence, you seek relief 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> on behalf of: (i) "A", a registered CPO, in connection with serving as the managing partner of ("Fund 1"); (ii) "B" in connection with operating ("Fund 2"), ("Fund 3"), ("Fund 5"), and ("Fund 6"); and (iii) "C" in connection with serving as the general partner of ("Fund 4") and ("Fund 7"), such that "D" may register and serve as the CPO of Funds 1 through 7 (each, a "Fund," and collectively, the "Funds") instead, while "A" would withdraw his registration as a CPO.<sup>2</sup>

Based upon the representations made in the correspondence, as supplemented by information provided to Division staff by Joseph Picone, Compliance Manager, National Futures Association ("NFA"),<sup>3</sup> we understand the relevant facts to be as follows. Fund 1 was formed in 1992, with "A" serving as the managing member and registered CPO thereof. Subsequently,

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<sup>1</sup> 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>.

<sup>2</sup> With your August 26 letter you submitted an organizational chart showing the relationships of "A", "B", "C", "D", and the Funds.

<sup>3</sup> This information was provided in a telephone conversation between Picone and Division staff held on November 2, 2009.

from June 2003 to February 2008, Funds 2 through 7 were formed, with various entities wholly owned by “A” serving as either the managing member or general partner or owning 100% of the voting shares of a Fund. These structures are intended to facilitate the favorable tax treatment of performance allocations to “A”, “B” and “C”. Upon review, NFA concluded that “B” and “C”, in addition to “A”, should be registered as a CPO by virtue of their relationship to a Fund. However, in order to avoid unnecessary duplicative registration burdens, NFA further suggested that “A” make the instant request.<sup>4</sup>

In support of the request you represent that:

1. “B” and “C” are not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.
2. “B”, “C” and “D” are under common ownership and control. “A” is the sole member, manager and principal officer of “B” and “D”. “B” is the sole shareholder of “C”.
3. The Funds have delegated all of their management authority to “D”.
4. “B” and “C” have no employees or other persons acting on their behalf, and they do not perform any functions or provide any services to the Funds.<sup>5</sup>

In further support of the request, “A”, “B”, “C”, and “D” have executed and submitted to the Division a written agreement undertaking joint and several liability for any violation by any of them of the Act or the Commission’s regulations<sup>6</sup> in connection with the performance of CPO functions with respect to a Fund.

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 failure to be registered as a CPO under Section 4m(1) of the Act in connection with serving as the general partner of Fund 1, or against “B” or “C” for failure to register as a CPO in connection with serving as a managing member, general partner or sole voting shareholder of a Fund. This

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<sup>4</sup> 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.

<sup>5</sup> For the purposes of this letter, this means that “B” and “C” do not engage in the solicitation of investors for the Funds, do not manage property of the Funds, and do not engage in any other activities that are subject to the Act or Commission regulations.

<sup>6</sup> Commission regulations may be found at 17 C.F.R. Ch. I (2009). They may be accessed through the Commission’s website, at: <http://www.cftc.gov/lawandregulation/index.htm>.

<sup>7</sup> See, e.g. CFTC Staff Letter 09-03 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,378 (May 21, 2009).

position is, however, subject to the conditions that “D”: (1) will serve as the CPO of the Funds; and (2) will register as a CPO and remain registered as such.

The relief issued by this letter does not excuse “A”, “B” or “C” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, they remain subject to all antifraud provisions of the Act<sup>8</sup> and the Commission’s regulations, as well as to 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. Also, the no-action position taken in this letter is applicable to “A”, “B” and “C” solely in connection with the operation of the Funds.

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 “A”, “B”, “C”, “D” or the Funds change in any material respect from those as represented to us. Further, 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.

If you have any questions concerning this correspondence, please contact me or Peter B. Sanchez, Special Counsel, at (202) 418-5237.

Very truly yours,

Ananda Radhakrishnan  
Director

cc: Joseph Picone  
Compliance Manager  
National Futures Association

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<sup>8</sup> See, e.g., 7 U.S.C. §§6b and 6o.