



## 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. 10-29  
Exemption  
June 30, 2010  
Division of Clearing and Intermediary Oversight

Re: Request for Limited Relief from the Disclosure Document Requirements of Commission Regulations 4.21, 4.24, and 4.25

Dear:

This is in response to your letter dated January 28, 2010, to the Division of Clearing and Intermediary Oversight (“DCIO” or the “Division”) of the Commodity Futures Trading Commission (“Commission”) requesting on behalf of “X”, the registered commodity pool operator (“CPO”) for (1) “A”; (2) “B”; (3) “C”; and, (4) “D” (each fund is referred to individually as a “Pool” and the funds are referred to collectively as the “Pools”), an interpretation of Commission Regulations 4.21, 4.24, and 4.25<sup>1</sup> with respect to the meaning of the term “pool” as it is used within the above referenced Regulations. Specifically, you request an interpretation from the Division as to whether each series of a series limited liability company, which has inter-series limited liability, can properly be considered a “pool” for the purposes of providing information to prospective and current participants in the Pools.

Based upon the representations made in your correspondence, we understand the relevant facts to be as set forth below. The Pools are organized as Delaware Series Limited Liability Companies issuing segregated series of limited liability company interest. You state that pursuant to the Delaware Limited Liability Company Act, Section 18-215,<sup>2</sup> assuming that certain enumerated conditions are met, the liabilities of one series are not enforceable against the assets

---

<sup>1</sup> The Commission’s regulations referred to herein are found at 17 C.F.R. Ch. I (2009). They can be accessed through the Commission’s website [www.cftc.gov](http://www.cftc.gov).

<sup>2</sup> 6 Del. C. § 18-215(b).

of another series. You further state that such structure provides a means of segregating assets relating to commodity trading without the formation of multiple limited liability companies, which, in turn, provides a significant reduction in the organizational costs associated with the establishment of the Pools. You represent that the various series of the Pools will possess numerous common characteristics, but that they will generally utilize the services of different commodity trading advisors (“CTAs”) and trading strategies, and that a number of business terms will vary among the series.

In light of the foregoing, you propose to prepare disclosure documents for the Pools consisting of three parts. The first part would contain information applicable to each Pool as a whole and all series thereof, provided that the forepart of the first part would be customized through a sticker or similar means to limit the series specific forepart information to the series being offered to the prospective participant. Additionally, you propose to customize the page cross-references for the description of expenses, risk factors, and break-even point through a sticker or insert to ensure compliance with the Commission’s regulations. Similarly, the break-even point per unit, as required to be disclosed in the forepart of the document, would be disclosed through means of a sticker or insert for the offered series only.

You propose that the second part of the disclosure document would include all required information for the offered series, including: the series-specific trading strategies; the CTA(s) managing the assets of the series; relevant performance information; the fees applicable to the offered series, including the break-even table; and risk factors specific to that series. Further, you represent that the second part would state that information for series other than the offered series would be available upon request, and provide the mechanism for making such request. In the event that the offered series had sub-series of units you state that information regarding all sub-series would be provided in the second part to all prospective participants being offered the series in question.

Finally, you propose to provide a third part to the document, which would contain general information on managed futures.<sup>3</sup>

---

<sup>3</sup> You have indicated in conversations with DCIO staff that the information proposed to be included in the third part of the document would be supplemental information pursuant to Regulation 4.24(v).

With respect to the dissemination of the proposed tripartite disclosure document, you represent that the three parts would be presented to a prospective participant in the order delineated above, although not necessarily bound together. You propose to display a legend on the cover of each part that all parts of the disclosure document must be distributed together, and to instruct selling agents to solicit consistent with said legend.

To facilitate the use of such a disclosure document, you urge the Division to interpret the term “pool” as it is used within Commission Regulations 4.21, 4.24, and 4.25 to mean the series for which the prospective participant is being solicited. You state that this is appropriate due to the existence of inter-series limited liability and the segregation of assets among the various series of the Pools.

Commission Regulation 4.21 requires that “each commodity pool operator registered or required to be registered under the [Commodity Exchange] Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool.” Commission Regulation 4.24(b)(1) requires that a disclosure document contain a risk disclosure statement that includes cross references to pages delineating the pool’s expenses and risks and the page on which the break-even point for the pool appears. Additionally, Regulation 4.24(d)(5) mandates that the break-even point for the pool be included in the forepart of the document. Finally, Regulation 4.25 directs the CPO to disclose the past performance of the pool and explicates the specific information that must be encompassed within the pool’s disclosure document.

Commission Regulation 4.10(d)(1) defines the term “pool” as it appears in Part 4 of the Commission’s regulations as “any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.” Commission Regulation 4.20(a)(1) mandates that “a commodity pool operator ... operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.”

Based on your representations above, it would appear that individual series of the Pools would not satisfy the requirement of Regulation 4.20(a)(1) as a series is not an “entity cognizable as a legal entity;” rather, it is part of a legally cognizable entity that is imbued by statute with certain rights and characteristics generally attributable only at the legal entity level. Therefore,

the Division determines that it is not consistent with Commission regulations to interpret the term “pool” as it appears in Part 4 of the Commission’s regulations to encompass a series of a Delaware Series Limited Liability Company.

Although the Division has declined to expand the meaning of “pool” within the context of Part 4, pursuant to the authority delegated by Regulations 140.93 and 4.12(a), the Division finds that it is consistent with the purposes of Part 4 and the public interest to provide exemptive relief with respect to the requirement of Regulation 4.21 that “each commodity pool operator registered or required to be registered under the [Commodity Exchange] Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool.” Accordingly, the Division will accept a modified disclosure document comprised of two parts with respect to each Pool as substituted performance, subject to the following conditions.

The first part of the modified disclosure document (“Part One”) shall contain all mandatory disclosures with respect to each Pool as a whole, and the second part of the disclosure document (“Part Two”) shall set forth all required disclosures that are specific to the offered series. Both parts must contain a legend that they are to be distributed to prospective participants together and are incomplete if not distributed together. All selling agents must be instructed to comply with the same. Moreover, prospective participants must sign an acknowledgement attesting to their receipt of both parts of the disclosure document. Finally, Part Two must contain a disclosure informing prospective participants of their right to obtain information regarding other series in the offered Pool upon request and detail the mechanism for doing so.

Regulation 4.24(b) requires the prominent display of the prescribed risk disclosure statement including cross-reference page numbers for the description of expenses, risk, and the break-even analysis. The Division continues to require the disclosure within the risk disclosure statement of the mandatory page references in Part One; however, the CPO will be permitted to use some form of acceptable customization (i.e., sticker, insert “[f]astened in a secure manner” consistent with Commission Regulation 4.1(a)(3), etc.) to provide the page numbers where such information appears in Part Two.

Regulation 4.24(d) mandates that certain information be disclosed in the forepart of the disclosure document, including the name, main business address, main business telephone

number, and form of organization of the pool; the same information with respect to the CPO; whether the pool is private, multi-advisor, principally protected, or continuously offered; the date of first intended use of the document; and the break-even point per unit of the pool. The forepart disclosure contained in Part One must specify that the offered Pool is a Delaware Series Limited Liability Company and identify all series being offered. To the extent that forepart information is series-specific, the CPO must either customize Part One through use of a sticker, insert “[f]astened in a secure manner” consistent with Commission Regulation 4.1(a)(3), or some other similarly effective means, or provide the requisite information for all series being offered in the Pool and not just the series being offered to the particular prospective participant.

Regulation 4.24(n) requires the disclosure of past performance consistent with Regulation 4.25. For purposes of the disclosure detailed in Regulation 4.25, the Division believes that it is acceptable for the CPO to disclose the performance of the offered series consistent with the manner in which the performance of an offered pool must be disclosed under the Commission’s regulations and for such disclosure to appear in Part Two of the document. The performance of the offered Pool’s other series, as well as any other pools operated by the CPO and the past performance of the offered series’s CTAs, must still be disclosed if the offered series does not have at least three years of trading history, consistent with Regulation 4.25(c).

Regarding all other disclosures mandated by the Commission’s regulations, to the extent that the information disclosed is relevant to the Pool as a whole, it must appear in Part One. Conversely, where the information required is specific to the offered series, such information may be included in Part Two.<sup>4</sup>

When submitting a modified two-part disclosure document, the CPO must inform the National Futures Association (“NFA”) of its decision to avail itself of the substituted performance, as detailed herein, and make the following representations:

- The Pools are organized as series limited liability companies in a jurisdiction whose statutes contemplate such an entity;

---

<sup>4</sup> The exemptive relief set forth in this letter applies to the disclosures that are required by Commission regulations and does not address the supplemental information proposed to be included in the third part of the Disclosure Document, as discussed in footnote 3. Nonetheless, we expect that this supplemental information will be disclosed in accordance with Regulation 4.24(v) and applicable rules of the National Futures Association.

- The CPO will receive all funds, securities or other property from a prospective or existing pool participant for the purchase of an interest or an assessment on an interest in a series of one of the Pools that it operates or that it intends to operate in the name of the series of that Pool; and
- The CPO will not commingle the property of any series in any of the Pools that it operates or intends to operate with the property of any other person, entity, or series of any operated pool.

Additionally, at the time of providing notice, the CPO must submit a copy of the duly executed documents evidencing each Pool's organization and operation as a series limited liability company to NFA.

This letter is based upon the representations made in the correspondence. Any different, changed, or omitted material facts or circumstances might render the interpretations and relief set forth in this letter void. You must notify the Division immediately in the event that the operations or activities of the CPO and/or Pool(s) change in any material way from those represented to the Division. Moreover, this letter represents an exemption granted by the Division and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions regarding this letter, please contact Amanda Olear, Special Counsel, at 202-418-5283, or Eileen Chotiner, Senior Compliance Analyst, at 202-418-5467.

Very truly yours,

Ananda Radhakrishnan  
Director

cc: Regina Thoele, National Futures Association, Chicago