



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-34
Interpretation
April 1, 2016
Division of Swap Dealer and Intermediary Oversight

Re: Interpretation that “B” is not a commodity pool under section 1a(10) of the Commodity Exchange Act and Commission regulation 4.10(d)(1)

Dear :

This is in response to your letter dated January 20, 2016 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). You request on behalf of “A”, the operator for “B”, an interpretation that “B” is not a commodity pool as defined in section 1a(10) of the Commodity Exchange Act (the “Act”) and Commission regulation 4.10(d)(1).

Based upon the representations made in your letter and other email correspondence (the “Correspondence”), we understand the facts to be as follows. You state that “A” is owned by “C” and “D”, who are brothers, with each owning % of “A”. You state that “B” was formed in May 2014 and began trading on June 2, 2014. You state that “B” is, and has only been, funded by “C” and “D”, who have contributed \$, with “C” contributing % and “D” contributing %. You state that interests in “B” have not been offered and never will be offered to any other person.¹ You also state that “B” is trading pursuant to a proprietary futures trading strategy developed by “C” and “D”. You state that only “C” and “D” have full trading authority over “B” and “B” pays no compensation to “A” for managing its trading. You state that, as of December 31, 2015, “B” had a net asset value of approximately \$. Since March 1, 2016, “A” has been registered with the Commission in connection with the operation of a separate fund open to outside participants. Prior to registration, “A” had been operating “B” pursuant to the exemption in Commission regulation 4.13(a)(2).

Based upon the foregoing, the Division does not believe that “B” falls within the meaning of a commodity pool pursuant to section 1a(10) of the Act or Commission regulation 4.10(d)(1). The interpretation provided herein represents the position of this Division only and does not necessarily reflect the views of the Commission or any other division or office of the

¹ The Division recognizes that, as you stated in your letter, that “C” and “D” may transfer some or all of their interests to estate planning vehicles that they may establish in the future.

“A”

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Commission. 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. Finally, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Special Counsel, at 202-418-5202.

Very truly yours,

Eileen T. Flaherty
Director
Division of Swap Dealer and
Intermediary Oversight