



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter 16-46
No-Action
March 31, 2016
Division of Swap Dealer and Intermediary Oversight

RE: Request for No-Action Relief from Commodity Pool Operator and Commodity Trading Advisor Registration on behalf of “A”

Dear :

This letter is in response to your request submitted to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) on July 17, 2015, (the “Correspondence”), on behalf of “A”. In the Correspondence, you request that the Division not recommend that the Commission take an enforcement action, pursuant to Section 4m(1) of the Commodity Exchange Act (“CEA”),¹ against “A” for failure to register with the Commission as a commodity pool operator (“CPO”) or commodity trading advisor (“CTA”), with respect to its management of assets belonging to and provision of advisory services to its clients.

Background

“A” is a limited liability company that provides services to the family and descendants of the “B Family”. “A’s” services to the “B Family” include asset allocation advice, investment due diligence, investment management, recordkeeping assistance, tax advice, management and administration of the various “B Family” investment entities, real estate management, management and administration of trusts for the “B Family”, including providing trustees, as well as numerous other responsibilities. You represent that “A” may from time to time determine to invest in investment vehicles that invest in futures contracts or swaps, or directly invest in futures or swaps. You also state that “A” provides advisory services, which may include offering advice on the propriety and advisability of entering into commodity interest transactions. Through each of these avenues, direct or indirect investment exposure to

¹ 7 U.S.C. 6m(1).

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commodity interests and providing advice as to whether a person should invest in commodity interests, “A” could be determined to be a CPO or CTA for the “B Family”, and be required to register as such with the Commission, absent an exemption, exclusion, or comparable relief issued by the Division. You request no-action relief consistent with CFTC Staff Letters 12-37 and 14-143, which the Division issued based upon the “Family Office Exclusion” adopted by the Securities and Exchange Commission (“SEC”) with respect to investment advisers (“IAs”).²

You represent that “A” satisfies all of the “family office” requirements of the SEC’s Family Office Exclusion except that one of “A’s” clients and LLC members is not a “family client” because she is the sister of a spouse of a lineal descendant of the “B Family” (“Sister-in-Law”).³ You further state that the Sister-in-Law has important familial ties to her brother, her brother’s wife (a “B” lineal descendant), and their children, which has resulted in her becoming an integral part of the “B Family”. You also represent that “A” filed an application for an order of exemption with the SEC,⁴ and received in response an exemptive order declaring that “A” “is a person not within the intent of section 202(a)(11)” of the Investment Advisers Act of 1940, which statutorily defines the term “investment adviser.” “A” represented in its application to the SEC that, “[“A”] does not hold itself out to the public as an investment adviser,” and “[“A”] is a ‘family office’ for the “B Family” and the [Sister-in-Law] (collectively, the ‘Extended “B Family”’) and will not offer its Services to anyone other than the Extended “B Family”.”⁵

No-Action Relief for “A”

Based upon the foregoing, the Division believes it is appropriate to grant no-action relief to “A” under these circumstances where the potential CPO/CTA does not hold itself out to or solicit the public, and provides services only to a specific set of family member clients, thereby

² See CFTC Staff Letter 12-37 (Nov. 29, 2012) and CFTC Staff Letter 14-143 (Nov. 5, 2014). CFTC Staff Letters 12-37 and 14-143 provided no-action relief from CPO and CTA registration, respectively, to entities able to meet the terms of the exclusion from the investment adviser definition for “family offices” adopted by the SEC in 2011. See 17 CFR 275.202(a)(11)(G)-1 and 76 Fed. Reg. 37983 (June 29, 2011). CFTC Staff Letters may be found at the Commission’s website, www.cftc.gov.

³ The “family client” definition includes, among other categories, “family members,” who are “all lineal descendants ... of a common ancestor ..., and such lineal descendants’ spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.” See 17 CFR 275.202(a)(11)(G)-1(d)(5). This single client of “A” fits neither the “family member” nor the “family client” definitions associated with the SEC’s Family Office Exclusion. Due to the Sister-in-Law’s participation, “A” does not technically meet the terms of the exclusion and, therefore, cannot claim the CPO/CTA registration relief provided to “family offices” by the Division in CFTC Staff Letters 12-37 and 14-143.

⁴ IAA Section 202(a)(11)(H); see Correspondence, Exhibit D, at 21.

⁵ Correspondence, Exhibit C, p. 4.

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limiting the Commission’s regulatory concerns and objectives. Accordingly, and consistent with prior practice in this area,⁶ the Division will not recommend enforcement action against “A”, pursuant to CEA Section 4m(1) for failure to register with the Commission as a CPO or CTA, with respect to its operation of “A” as a “family office,” or its provision of advisory services to the “B Family” and the Sister-in-Law.⁷

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. 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. Further, this letter, and the relief contained herein, is based upon 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.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

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

⁶ See, e.g., CFTC Staff Letters 96-11 (Jan. 18, 1996), and 14-104 (Jun. 20, 2014).

⁷ Alternatively, you request in the Correspondence interpretive relief that would permit reliance on CFTC Staff Letters 12-37 and 14-143 by any “family office” granted an SEC exemptive order similar to that described in this letter. Because of the no-action relief granted herein, the Division need not address that alternative request.