



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-6700
Facsimile: (202) 418-5528
eflaherty@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 17-46
No-Action
August 2, 2017
Division of Swap Dealer and Intermediary Oversight

RE: Request for No-Action Relief from the Requirement to Register as a Commodity Pool Operator under Section 4m(1) of the Commodity Exchange Act

Dear :

This is in response to your letter dated May 22, 2017, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the letter, you request on behalf of “A” and “B”, that “B” receive relief from the requirement to register with the Commission as a commodity pool operator (“CPO”) under section 4m(1) of the Commodity Exchange Act (“CEA” or “Act”)¹ in connection with its role as director of certain commodity pools listed in Appendix A (the “Pools”). Instead, you state that “B” will delegate certain of its responsibilities as the CPO of the Pools to “A” pursuant to the applicable requirements of CFTC Staff Letter No. 14-126 (“Letter 14-126”),² except for criterion 6 therein.

Background

On May 12, 2014, the Division issued CFTC Staff Letter No. 14-69 (“Letter 14-69”), which was in response to numerous requests asking that the Division provide no-action relief for failure to register as a CPO under section 4m(1) of the Act, if another person would serve as the registered CPO of the commodity pool at issue in lieu of the requesting CPO. Letter 14-69 developed a standardized, streamlined approach pursuant to which the Division addressed these types of relief requests, and set forth certain requirements that were based on prior staff no-action letters.

¹ 7 U.S.C. 6m(1). The Act is found at 7 U.S.C. 1 et seq. (2016). It, and the Commission’s regulations, may be accessed through the Commission’s website, <http://www.cftc.gov>.

² CFTC Staff Letter No. 14-126 (Oct. 15, 2014). This and the other Commission staff letters referenced herein are also available on the Commission’s website, <http://www.cftc.gov>.

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On October 15, 2014, the Division issued Letter 14-126, which was a further refinement of the relief addressed in Letter 14-69. Like Letter 14-69, Letter 14-126 provided no-action relief for failure to register as a CPO under CEA Section 4m(1), if another person would serve as the registered CPO of the commodity pool at issue in lieu of the requesting CPO. The circumstances and conditions for relief under Letter 14-126 were, in purpose and effect, the same as those set forth in Letter 14-69, with the exception of certain added clarifications. One of those conditions was that, if the Delegating CPO³ and the Designated CPO⁴ are each a non-natural person, then one such CPO controls, is controlled by, or is under common control with the other CPO. The relief provided by letter 14-126 was self-executing, and no notice or claim needed to be filed, in order to, in part, ease the administrative burdens of Letter 14-69 on the Division. In issuing Letter 14-126, the Division noted that there may be other CPO delegation situations involving circumstances in which CPO registration no-action relief may be warranted that are not addressed by Letter 14-126, and indicated that it intends to continue to evaluate requests submitted pursuant to Commission Regulation 140.99⁵ for CPO registration no-action relief from persons who fall outside the scope of Letter 14-126.⁶

Requested Relief

Based on the representations made in your letter and other email and telephone correspondence (the “Correspondence”), we understand the facts to be as follows. “A”, the Designated CPO, is organized as a Delaware corporation and is subject to U.S. federal and state regulation. “A” is registered with the Commission as a CPO and has been a member of the National Futures Association in such capacity, since October 6, 1994. “A” is an advisory affiliate of “C”, which serves as the investment manager of each of the Pools, and has been registered with the Commission as a commodity trading advisor (“CTA”) and an NFA Member in that capacity since July 1987, when including its predecessor firms.⁷

Both “B”, the Delegating CPO, and the Pools are organized as corporations under the laws of the Commonwealth of the Bahamas. “B” is an affiliate of the Pools’ administrator, “D”. “B” was appointed as an administrative director of each of the Pools to provide them with administrative conveniences and efficiencies, and together with certain “D” staff, “B” performs

³ This term is defined in Letter 14-126.

⁴ *Id.*

⁵ 17 CFR 140.99.

⁶ Letter 14-126, p. 2. The Division indicated the same following the issuance of Letter 14-69 as well.

⁷ “C” is also registered as an investment adviser with the Securities and Exchange Commission (“SEC”) and is considered a large advisory firm, with regulatory assets under management (“AUM”) for “C” and its advisory affiliates of approximately US \$, as of March 31, 2017.

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such services in the Bahamas on behalf of the Pools, *e.g.*, liaising with Bahamian regulators and assisting with local regulatory filings.⁸

In addition, you state that “A” and “B” satisfy all of the applicable criteria in Letter 14-126, except for criterion 6 therein, which states that, “[i]f the Delegating CPO and the Designated CPO are each a non-natural person, then one such CPO controls, is controlled by, or is under common control with the other CPO.” In particular, you represent the following:

- Pursuant to a legally binding document, “B” has delegated to “A” all of its CPO rights and obligations with respect to the Pools.
- “B”, including any of its employees or other persons acting on its behalf, does not participate, and has never participated, in the solicitation of participants for the Pools.
- “B”, including any of its employees or other persons acting on its behalf, does not manage, and has never managed, any property of the Pools beyond that which is required for the fulfillment of its role as a fiduciary to the Pools.
- “B” is not subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act.
- There is a business purpose for “A” being a separate entity from “B” that is not solely to avoid registration by “B” under the Act and the Commission’s regulations.
- The books and records of “B” with respect to the Pools are maintained by “A” in the United States in accordance with Commission Regulation 1.31.⁹
- “B” and “A” have executed a legally binding document whereby each undertakes to be jointly and severally liable for any violation of the Act or the Commission’s regulations by the other in connection with the operation of the Pools.

Relief Granted

Based upon the representations made in the Correspondence, the Division will not recommend that the Commission commence any enforcement action against “B” for failure to register as a CPO under CEA Section 4m(1) in connection with its role with respect to the Pools. This position is subject to all of the representations you have made in connection with your relief request. Although “A” and “B” are not under common control and neither “A” nor “B” controls

⁸ In the context of your representations regarding “B’s” activities with respect to the Pools, the Division understands such activities would not, on their own, otherwise require CPO registration.

⁹ 17 CFR 1.31.

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the other, they will remain jointly and severally liable for any violations of the Act of Commission regulations. Further, the entity to which “B” has delegated, “A” has itself been registered as a CPO for more than 20 years, is affiliated with a dually registered CTA-investment adviser with over \$ AUM, and will maintain all books and records in the United States.

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

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Appendix A

Commodity Pools Delegated by “B” to “A”

- 1. “E”**
- 2. “F”**
- 3. “G”**
- 4. “H”**
- 5. “I”**
- 6. “J”**
- 7. “K”**
- 8. “L”**
- 9. “M”**
- 10. “N”**
- 11. “O”**
- 12. “P”**
- 13. “Q”**