



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Matthew Kulkin
Director

CFTC Letter No. 18-15
No-Action
May 14, 2018
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 November 22, 2017, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), as amended by subsequent correspondence dated April 24, 2018. In the letter, you request on behalf of “A” 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 trustee to multiple commodity pools organized as series trusts under the “B”,² a Cayman Islands umbrella series trust, and to the “C”,³ a separate commodity pool organized as a Cayman Islands trust (each, a “Pool” and collectively, the “Pools”). Instead, you state that “A” will delegate certain of its responsibilities as the CPO of the Pools to “D”, pursuant to the applicable requirements of CFTC Staff Letter No. 14-126 (“Letter 14-126”),⁴ except for criterion 6 therein.

Background

On May 12, 2014, the Division issued CFTC Staff Letter No. 14-69 (“Letter 14-69”),⁵ which was in response to numerous requests asking that the Division provide no-action relief for

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 Each individual series is a separate commodity pool covered by the relief herein; the list of eligible commodity pools is attached as Appendix A.

³ “C” is listed with the National Futures Association as pool number “X”.

⁴ CFTC Staff Letter No. 14-126 (Oct. 15, 2014), available at <http://www.cftc.gov/idc/groups/public/%40lrlettergeneral/documents/letter/14-126.pdf> (last retrieved Mar. 20, 2018). This and the other Commission staff letters referenced herein are also available on the Commission’s website, <http://www.cftc.gov>.

⁵ CFTC Staff Letter No. 14-69 (May 12, 2014), available at <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/14-69.pdf> (last retrieved Mar. 20, 2018).

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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.

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 CPO⁶ and the Designated CPO⁷ 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 140.99⁸ for CPO registration no-action relief from persons who fall outside the scope of Letter 14-126.⁹

Requested Relief and Legal Analysis

Based on the representations made in your letters and other email and telephone correspondence (the “Correspondence”), we understand the facts to be as follows. “D”, the Designated CPO, has its principal place of business in the State of New York, is organized as a Delaware limited liability company, and is subject to U.S. federal and state regulation. “D” is registered with the Commission both as a CPO and commodity trading advisor (“CTA”), since 2013 and 2004, respectively, and is also a National Futures Association member in those capacities. “D” is also registered as an investment adviser with the Securities and Exchange Commission (“SEC”), pursuant to the Investment Advisers Act of 1940, and is considered a large advisory firm with approximately US\$ regulatory assets under management.¹⁰ While the operations of the Designated CPO, “D”, are largely based in the United States, “D” is an affiliate of “E” and is part of the global “F”, a large full service financial institution with total assets of

⁶ This term is defined in Letter 14-126.

⁷ *Id.*

⁸ 17 CFR 140.99.

⁹ Letter 14-126, p. 2. The Division indicated the same following the issuance of Letter 14-69 as well.

¹⁰ “D”, Form ADV Filing (Mar. 31, 2017).

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approximately US\$, as of September 30, 2017. Consequently, “D’s” books and records are maintained in the U.S., as well as the Cayman Islands.

The Pools include several individual series of a Cayman Islands umbrella series trust, as well as a separate commodity pool also organized as a Cayman Islands trust. “A”, the Delegating CPO, is a Cayman Islands exempted company, which, by virtue of its license as a trust company under the Cayman Islands Trusts Law, serves as the sole trustee to the Pools.

In addition, you state that “A” and “D” 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, “A” has delegated to “D” all of its CPO rights and obligations with respect to the Pool.
- “A”, including any of its employees or other persons acting on their behalf, does not participate, and has never participated, in the solicitation of participants for the Pools.
- “A”, including any of their employees or other persons acting on their 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 trustee to the Pools.
- “A” is not subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act.
- There is a business purpose for “D” being a separate entity from “A” that is not solely to avoid CPO registration by “A” under the Act and the Commission’s regulations.
- The books and records of “A” with respect to the Pools are maintained by “D” in accordance with Commission Regulation 1.31.¹¹
- “A” has executed legally binding documents with “D”, whereby each entity 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.

As noted above, although “A” and “D” are not under common control and neither “D” nor “A” controls the other, they will remain jointly and severally liable for any violations of the Act or Commission regulations related to operating the Pools. Further, the entity to which “A”

¹¹ 17 CFR 1.31.

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has delegated, “D”, has itself been registered as a CPO and CTA for four and thirteen years, respectively, is an affiliate of “F”, and will maintain all books and records related to the Pools in accordance with Commission Regulation 1.31. The Division believes that, under these circumstances, granting no-action relief permitting the delegation of CPO duties and responsibilities for the Pools to “D” is appropriate, notwithstanding that “A” and “D” do not qualify for relief under Letter 14-126.

Relief Granted

Based upon the representations made in the Correspondence, the Division will not recommend that the Commission commence any enforcement action against “A” for failure to register as a CPO under CEA Section 4m(1) in connection with its role as trustee with respect to the Pools. This position is subject to and taken in reliance on all of the representations you have made in connection with your relief request.

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,

Matthew Kulkin
Director
Division of Swap Dealer and
Intermediary Oversight

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Appendix A: “B” Umbrella Series Trust Commodity Pools

“G”

“H”

“T”