



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Matthew B. Kulkin  
Director

CFTC Letter No. 18-23  
No-Action  
August 21, 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 January 5, 2018 to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”). 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”)<sup>1</sup> in connection with its role as the general partner of certain commodity pools (“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”),<sup>2</sup> except for criterion 6 therein.

### Background

On May 12, 2014, the Division issued CFTC Staff Letter No. 14-69 (“Letter 14-69”),<sup>3</sup> 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.

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<sup>1</sup> 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>.

<sup>2</sup> CFTC Staff Letter No. 14-126 (Oct. 15, 2014), *available at* <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/14-126.pdf> (last retrieved July 13, 2018). This and the other Commission staff letters referenced herein are also available on the Commission’s website, <http://www.cftc.gov>.

<sup>3</sup> CFTC Staff Letter No. 14-69 (May 12, 2014), *available at* <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/14-69.pdf> (last retrieved July 13, 2018).

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 CPO<sup>4</sup> and the Designated CPO<sup>5</sup> 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 140.99<sup>6</sup> for CPO registration no-action relief from persons who fall outside of the scope of Letter 14-126.<sup>7</sup>

#### Requested Relief and Legal Analysis

Based on the representations made in your letter and other correspondence (“Correspondence”), we understand the facts to be as follows. “A” is an indirect subsidiary of “C”, a publicly traded company (together, with its affiliates, “C”). “A” is a registered CPO and has been registered in such capacity with the Commission since 2004. “A” has also been registered as a commodity trading advisor since 2006. “A” serves as the commodity trading advisor of the Pools and serves as their sponsor as well. In addition, “A” is registered with the Securities and Exchange Commission (“SEC”) pursuant to the Investment Advisers Act of 1940.<sup>8</sup> “A’s” operations are based in the United States, and all of its books and records are kept in the United States. As of December 31, 2017, “A” and its subsidiaries had approximately \$ in assets under management.

“B” is a special purpose entity that was created for the purpose of acting as the general partner of private investment funds sponsored by “A”. “B” is not affiliated with either JPM or “A”. “B” does not have significant assets or employees, and the shareholders and directors of “B” are natural person residents in the Cayman Islands who serve as independent directors. The Pools with respect to which “B” is requesting registration relief as a CPO are listed in Appendix A.

In addition, you state that “B” and “A” 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

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<sup>4</sup> This term is defined in Letter 14-126.

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 140.99 (2017).

<sup>7</sup> Letter 14-126, p. 2. The Division indicated the same following the issuance of Letter 14-69 as well.

<sup>8</sup> 15 U.S.C. §§80b-1 to 80b-21.

is under common control with the other CPO.” In particular, you represent, among other things, the following:

- Pursuant to a legally binding document, “B” has delegated to “A” all of its investment management authority 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.
- “B” is not subject to 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.<sup>9</sup>
- “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.

As noted above, although “A” and “B” are not under common control and neither “A” nor “B” controls the other, they will be jointly and severally liable for any violation of the Act or the Commission’s regulations related to operating the Pools. Further, the entity to which “B” has delegated has been registered as a CPO for more than 13 years, is dually registered with the SEC, has approximately \$ under management and will maintain all books and records in the United States in compliance 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 “A” is appropriate, notwithstanding that “B” and “A” 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 “B” for failure to register as a CPO under section 4m(1) of the Act in connection with its current role with respect to the Pools. This position is subject to and taken in reliance on all of the representations that you have made in connection with your relief request.

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<sup>9</sup> 17 CFR 1.31 (2017).

“B”

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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. 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.

Should you have any questions, please contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Special Counsel, at 202-418-5202.

Very truly yours,

Matthew B. Kulkin  
Director  
Division of Swap Dealer and  
Intermediary Oversight

“B”  
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## Appendix A

“D”  
“E”  
“F”  
“G”