

CFTC Letter No. 00-83**July 5, 2000****No-Action; Interpretation****Division of Trading & Markets**

Re: Section 4m(1) of the Commodity Exchange Act -- Request for confirmation of continued effectiveness of prior CPO and CTA no-action positions if operation of a group of investment companies is transferred to a trust company affiliated with one of the current joint managers.

Dear :

This is in response to your letter dated April 17, 2000, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request on behalf of your client "N" that the Division confirm the continued effectiveness of several prior no-action letters issued by the Division¹ affecting certain management investment companies (the "Existing Puerto Rico Funds") organized under the laws of the Commonwealth of Puerto Rico and registered pursuant to the Puerto Rico Investment Companies Act,² in the event that one of the existing managing entities of the investment companies is replaced by "N". You further request extension of the prior no-action positions to cover similar investment companies ("New Puerto Rico Funds") not yet formed.

Based upon the representations contained in your correspondence, we understand the facts to be as follows. "R" and "S"³ jointly manage the "T" and additional funds in the same series,⁴ the "U" and the "V" (all collectively referred to herein as the "Tax Free Funds") as well as the "Allocation Fund" and the Tax-Free Funds together comprise the Existing Puerto Rico Funds). It has been decided that "N" will replace "R" with respect to the operation and management of the Existing Puerto Rico Funds and the commencement of the New Puerto Rico Funds. Current employees of "R" who are involved with the Existing Puerto Rico Funds and the development of New Puerto Rico Funds are being transferred to "N". "S", however, will continue to act as a joint trading manager for the Existing Puerto Rico Funds. "R" will also continue to act as the administrator, transfer agent and custodian for the Existing Puerto Rico Funds. With respect to any New Puerto Rico Funds, "N" will be the administrator, transfer agent and custodian.

The Existing Puerto Rico Funds are not required to register as investment companies pursuant to Section 6(a)(1) of the Investment Company Act of 1940 ("ICA").⁵ Except for one open-end portfolio of the Allocation Fund, each of the Existing Puerto Rico Funds is a non-diversified, closed-end management investment company. Each of the Existing Puerto Rico Funds may utilize financial futures contracts and options on those contracts traded on designated contract markets for purposes consistent with Commission Rule 4.5(c)(2). Pursuant to the prior no-action letters, "R" has not registered as a commodity pool operator ("CPO") in connection with operation of the Existing Puerto Rico Funds and neither "R" nor "S" has registered as a commodity trading advisor ("CTA") in connection with commodity interest trading advice to the Existing Puerto Rico Funds. You request that the prior no-action letters remain effective following the substitution of "N" for "R" and that "N" not be required to register as either a CPO or a CTA.

In support of your request, you make the following representations:

1. "Q" is the principal place of business of "N" and the principal residence of all directors, officers and principals thereof, except that two of the ten "N" directors have their principal residences in the continental United States but will engage in material activities concerning "N", including board meetings, only in Puerto Rico;⁶
2. At least seventy-five percent of the directors of each Existing Puerto Rico Fund have their principal residences in Puerto Rico;
3. Shares of stock in each Existing Puerto Rico Fund have been and will continue to be sold solely to persons who have their principal residence or place of business in Puerto Rico;
4. Each Existing Puerto Rico Fund has been and will continue to be registered and regulated under the PRICA;
5. "N" will continue to operate each Existing Puerto Rico Fund in a manner consistent with Rule 4.5(c)(2);
6. "N" will continue to comply with the requirements of Rule 4.14(a)(8) with respect to the manner in which commodity interest trading advice is rendered to each Existing Puerto Rico Fund;⁷ and
7. "N" will submit to such special calls as the Division, or other representatives of the Commission, may make to demonstrate compliance with the terms and conditions of the prior no-action letters and this letter.

Except for the substitution of "N" for "R", the Existing Puerto Rico Funds will continue to be subject to the laws of the Commonwealth of Puerto Rico as set forth in the prior no-action letters. The Existing Puerto Rico Funds have functioned, and will continue to function, as described in the prior no-action letters.

The New Puerto Rico Funds (like the Existing Puerto Rico Funds) will each be subject to the laws of the Commonwealth of Puerto Rico. "N" makes the same representations with respect to each New Puerto Rico Fund that it has made above with respect to the Existing Puerto Rico Funds, and further represents that it will advise the Division in writing of each New Puerto Rico Fund that "N" will operate and advise in reliance upon this letter. Accordingly, you request that the Division confirm that it will not recommend that the Commission commence any enforcement action against "N" based solely upon "N's" failure to register as a CPO or as a CTA with respect to the operation of, or the furnishing of commodity interest trading advice to, any New Puerto Rico Fund.

Based upon the foregoing, including the specific representations made by "N", the Division: (1) confirms the continued effectiveness of the positions taken in the prior no-action letters with respect to "S", and accepts the substitution of "N" for "R" as a beneficiary of the no-action positions; (2) will not recommend that the Commission commence any enforcement action against "N" based solely upon its failure to register as a CPO or as a CTA in connection with the operation of, or the furnishing of commodity interest trading advice to, the Existing Puerto Rico Funds or any New Puerto Rico Funds. These positions are based, in part, upon your representations that: (1) at least 75% of the directors of the Fund will have their principal residences in Puerto Rico; (2) shares of stock in the Fund will be sold exclusively to persons who have their principal residences or principal places of business in Puerto Rico; (3) each Existing Puerto Rico Fund is (and each New Puerto Rico Fund will be) registered as an investment company under the PRICA and, thus, is (or will be) exempt from registration as an investment company under the ICA; (4) each Existing Puerto Rico Fund and each New Puerto Rico Fund will be operated in a manner consistent with Rule 4.5(c)(2); and (5) "N" will continue to comply with the requirements of Rule 4.14(a)(8) with respect to the manner in which commodity interest trading advice will be provided to the Existing Puerto Rico Funds and with respect to any New Puerto Rico Fund. This letter is further subject to the condition that "N" will submit to such special calls as the Division or other representatives of the Commission may

make to demonstrate compliance with the prior no-action letters referred to in footnote 1 above and with the representations which you have made to us.

The positions taken herein do not excuse "N", "R", "S" or any of their respective directors, officers or employees from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder, including without limitation, all antifraud provisions of the Act and the Commission's regulations, and the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Further, the relief provided herein is applicable to "N" solely in connection with operating and furnishing commodity interest trading advice to the Existing Puerto Rico Funds and any New Puerto Rico Funds, and to "S" in connection with operating and furnishing commodity interest trading advice to the Existing Puerto Rico Funds.

This letter is based on the representations made to us and is subject to compliance with the condition stated above. Any different, changed or omitted facts or circumstances might render the no-action positions taken herein void. You must notify us immediately in the event that the operations or activities of "N", "S", or any of the Existing Puerto Rico Funds change in any respect from those as represented to us (including the commencement of any New Puerto Rico Funds).

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, an attorney on my staff, at (202) 418-5445.

Very
truly
yours,

John C.
Lawton
Acting
Director

1 These letters include CFTC Staff Letter No. 95-30 [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,371 (Feb. 8, 1995), and unpublished letters dated May 24, 1995, October 16, 1995, May 2, 1996, and October 11, 1996. You also request confirmation of continued effectiveness of the verbal assurances received in response to your letter to the Division dated December 8, 1998.

2 Act No. 6 of October 19, 1954, as amended, 10 L.P.R.A. 661.

3 "S" is a banking institution excluded from the definition of "investment adviser" pursuant to Sections 202(a)(2) and 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. §§80b-202(a)(2) and 80b-202(a)(11) (1994) (the "IAA").

4 "X" through "Y" inclusive.

5 15 U.S.C. §80a-6(a)(1) (1994).

6 "A" and "B" reside in New Jersey respectively. Two other directors of "N" ("C" and "D") are registered with the Commission as associated persons of "Z" and "R" (both are also listed as principals of "R").

7 "N" is a trust company excluded from the definition of "investment adviser" pursuant to Sections 202(a)(2) and 202(a)(11) of the IAA.